United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B
P/s

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume IV—Pages A-2041 to A-2720

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UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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A Yes.

Q And the first payment date would be December 15, '69?

A Yes, that's correct.

Q And he would have to make 19 payments?

A Yes.

Q And again the total of the payments would be $9,003.15, which is the same as the total price including the interest and the finance charges, right?

A That's correct.

Q That's what he did?

A Yes.

MS. HYNES: Will you identify the exhibit you are reading from?

MR. FLEMING: I did, 146-O.

Q When you were running the dinners, am I correct that at the matter of your direction the property reports always had to be on the table?

A That's correct.

Q Am I also correct that it was your policy that there should not be too much literature on the table?

A That's correct, too.

Q So if the property reports were buried, at least they weren't buried under too much, is that right?

A That's correct.

Q Did you ever see purchasers reading the property reports?

A Yes, I have.

Q At the dinners?

A Yes, I have.

Q Did you see people cancel on the tours out to Rio Rancho?

A Yes.

Q Were you ever at a dinner where a customer -- I withdraw that -- where a prospective purchaser asked you if the purchaser could expect to make money in one or two years on the investment?

A Yes, I had that question asked.

Q What did you tell them when they said that?

A I would tell them that if that's what their interest was, this was not for them.

Q What was not for them?

A The property at Rio Rancho.

Q While you were in New York at the New York dinners, what was the supervising state agency, the Department of State or something like that?

A The Department of State, yes.

Q Once in a while did an inspector from the

Department of State walk into one of your dinners unannounced?

A Yes, they have.

Q That happened on several occasions in your experience?

A At the dinners at which I attended about two or three times during that period of time.

Q When they came in on these unannounced visits, they checked the material on the tables?

A They checked -- well, the first thing they did was check the licenses of all the sales people including myself to see that everyone was licensed.

Q They checked the materials that were on the tables to make sure the property reports were there?

. Yes, we had literature cases with extra material. They checked to see that nothing that did not have an NYA number was there.

Then they saw through the entire program.

Q They stayed for the film?

A Yes, the films and the presentation from the podium.

Q Heard your presentation?

A Yes.

Q Did they ever yell hold?

A No.

Q My question to you is, did they ever say to you stop it?

A No.

Q Did they ever tell you that film was bad?

A No.

Q Your presentation was bad?

A No.

Q Did they ever say you didn't have the literature on the table?

A No.

Q Did they ever say you were hiding literature?

A No.

Q Did they ever criticize your dinner in any way?

A Not to my knowledge, not to me.

Q Those dinners were no different than any other dinners?

A The same.

Q Those people came in unexpected and unannounced?

A Yes.

Q And they worked for the State of New York?

A Yes.

Q By the way, you talked about these deletions where there would be no sales at a dinner and someone would come in and say there had been a sale?

A Yes.

Q In fact, you knew there had not been a sale?

A That's correct.

Q Was there any code word for that?

A I didn't have any code words, no.

Q When you testified about these sales dinners in this other proceeding, did you testify to such false deletions?

A What kind of -- would you repeat that?

Q Do you remember testifying under oath about the sales procedures at ATC on a prior occasion?

A Yes, I remember testifying.

Q At any time during that testimony under oath did you mention these allegedly false deletions?

A I don't recall whether I was asked the question.

Q Did Mr. Devorkin ask you the question?

A Yes, he did.

Q This week?

A Yes.

MR. FLEMING: May I have just a moment, your Honor.

(Pause.)

MR. DEVORKIN: I am sorry, Judge. May I just check because I know when I sit down I am going to stay there.

I will take my chances. I am through.

(Continued on next page.)

THE COURT: Any redirect?

Oh, Mr. Arkin?

MR. ARKIN: Yes, your Honor.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Lederman, I am Stanley Arkin. I represent certain people here.

A Yes. I met you before.

Q Oh, really? When was that?

A In Albuquerque.

Q Do you recall when that was?

THECOURT: What has that got to do with this lawsuit?

MR. ARKIN: I am trying to be cordial.

I will continue.

Q Mr. Lederman, you have been in the real estate business since 1952?

A Yes, sir.

Q And you say you have sold homes during that period up until the time you got to Rio Rancho?

A Not just homes, no. Homes, rented apartments, real estate syndications.

Q I take it that all the homes that you sold were built upon land, weren't they?

A Yes, they were.

Q And I take it, too, that part of the price of the home also included the price of the land?

A Yes.

Q So that when you sold a home to somebody or you represented somebody who was a purchaser of a home, you were also participating in the sale of land, weren't you?

A Yes.

Q And you were cognizant, weren't you, of the value of the land when you were selling or buying that piece of property, am I right?

A Not necessarily the specific value of that piece of land.

Q You have been in real estate in New York State here for, well, 24, 25 years?

A. That's correct.

Q And you know that in New York State, taxes go to the land and the house separately, doesn't it?

A I have never been involved in that end of it, about the taxes.

Q Well, you were a real estate broker, right?

A Yes.

Q And a customer came to you and asked you about real estate taxes, didn't he?

A Yes.

Q And you had to advise him what the real estate taxes were on a particular parcel of property, isn't that so?

A Yes.

Q And in doing so you must have been aware that there were figures separately for the house and the land, isn't that so?

A No, we --

THE COURT: No, that is not so.

A No.

Q But that the house and the land are appraised separately?

A I wasn't involved in the apprvisal of it. I sold primarily development homes, new homes that were going to be built. That was most of my experience in that.

Q You sold homes which were going to be built?

A Yes.

Q You sold somebody a contract to build a home on a particular piece of property?

A No. I would represent the developer of a tract of property. He would have model houses there. I would have salesmen at the site and people would buy based upon the model house.

Q And they would pick out their site, too, I take it?

A Yes.

Q And when they picked out their site, there was nothing on the site at that time?

A That's correct.

Q Where in New York State did yo sell those kinds of homes?

A Long Island, Westchester County, up in that vicinity.

Q Any particular developments by name that you can remember?

A It would be very difficult. It was a long time ago.

Q For how long did you work for any particular developer, not AMREP?

A Until we sold their houses.

Q Do you recollect any particular development you worked at for any particular period of time?

A It was usually a period of months. I handled several developments at one time.

Q Were there any you worked for for more than a few months?

A We were usually sold out in a period of months. There may have been a period of a year on one here or there. I don't recall.

Q During the course of, say, the year, were there price changes from time to time on particular homes?

A Yes, there were.

Q And they went up, didn't they?

A Yes.

Q You are aware that every person who worked for Rio Rancho or, rather, ATC Realty, was required to have a ticket or a license to sell, isn't that so?

A A real estate license in the state, yes.

Q A salesman's license?

A Yes.

Q Or in your case, a broker's license?

A That's correct.

Q And you had to take an examination in order to obtain either a salesman's license or a broker's license?

A Yes, that's correct.

Q Do you know what kind of training was -- strike that.

Do you know whatkind of studying was required in order to take the examination for that particular license?

A The state would send a booklet with a notice for the test and everything they needed for the test was in that booklet.

MR. ARKIN: Please mark this.

XX (Defendants Howard Friedman and Henry Hoffman Exhibit BD marked for identification.)

Q I show you BD for identification (handing).

Are you able to identify this?

A I've seen it before.

I don't think this is the book that the state sent, but I've seen this book before.

Q Do you know if this particular book is the book which is utilized by somebody who is a prospective licensee?

A It could be, yes.

I mean, it isn't something that the state sends to the people.

Q Is this something that people use to study for the examination?

A Some people, yes, yes.

Q Do you know some people at AMREP or ATC who used this to study for the examination?

A I don't know.

MR. ARKIN: Please mark this booklet.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit BE marked for identification.)

Q I show you BE for identification (handing).

Do you recognize that?

A Yes.

Q What is this?

A It's the real estate salesman's manual.

Q Is this particular manual sent to all prospective licensees?

A I think so. It looks -- it looks similar to it, yes.

Q Is this particular manual provided to everybody who went to work for ATC?

A If that's the one that is supplied by the state, yes.

Q Well, I can't answer your question.

Would you like to look through it and see if you recognize it?

A It has been many years since I've seen one, I'm not sure if this is the one that was sent by the state.

Q When were you last a manager for ATC?

A For ATC? In 1975. But the books did not come -- we did not issue the books, they were sent directly to the people by the state.

Q Didn't you supervise those particular people, or some of them?

A Yes, but not when it came to the book.

Q Didn't they ever discuss with you anything they received from the state?

A Yes. But I really don't recall.

It looks like a book that they would receive, but I can't swear to that. I'm not sure.

Q Didn't you ever ask any of your salesmen what it was they received from the state?

A No, because I know from over the years they always received a booklet from the state. It may have changed from time to time, but I'm not that familiar with the booklet.

Q I take it, then, it was not your concern whether they were licensed or not?

A Yes, of course it was.

Q And you had to make sure they were licensed or not?

A When you say make sure they were licensed --

Q Was it part of your responsibility to make sure they were licensed, Mr. Lederman?

A No, not always, no.

Q All right.

Let me show you Defendant's Exhibit AA in evidence (handing).

Sir, were you a manager in April, 1970?

A I was a team manager, yes.

Q Are you familiar with this particular memorandum?

A Never saw it before in my life.

Q Do you know who Mr. Zaknich is?

A I knew who he was, yes.

Q Who was he?

A I believevhe was the national sales manager.

Q Do you ever recall him at any sales meeting or, for that matter, anybody else at any sales meeting saying thatyou had to make sure that all of the people who worked there were licensed or ticketed?

A He was never at any sales meeting that I attended.

Q What about anybody else?

A It was --

THE COURT: I don't know the point of all this. The witness has stated that you had to be licensed in order to sell for AMREP or ATC. He said that.

MR. ARKIN: Well, if your Honor would want an offer of proof, I will make it, but I will go on to something else.

THE COURT: It is unnecessary. He is on the record saying you had to be licensed.

He doesn't know what these people read in order to get licensed. That is what you keep asking.

MR. ARKIN: That's correct, your Honor.

Q Part of your responsibility as a team manager was to make sure that proper materials were utilized, isn't that so?

A Yes, that's correct.

Q And also to make sure that the salesmen did not do anything which was in violation of company policy, isn't that also true?

A Yes, that's correct.

Q And that was part of the reason that you spoke to customers after they signed the contract, is that correct?

A Yes.

Q You wanted to make sure everything was kosher?

A That's correct.

Q And also, I take it, to make sure that each customer had gotten the appropriate reports, the HUD report and the offering statement, am I right?

A Yes.

(Continued on next page.)

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Q By the way, do you know what an offering statement is?

A Yes. It is a -- a booklet showing -- giving information about the -- about the property that has been filed with the state, or the HUD report with the federal government.

Q And with respect to the offering statement, New York State offering statement is approved by the state, also, isn't that so?

A As far as I am concerned -- as far as I know, not approved, no.

Q Excuse me.

The report itself is approved by the State, was it not?

A I don't understand what you mean by -- the statement --

Q The report could not be used until submitted to the state, am I correct?

A It is submitted to the state, yes.

Q And the state had to say, "All right, you can use it," am I correct?

A Yes, that you can use it, yes.

Q That's what I meant by "approved".

x

(Defendant Howard Friedman and Henry

Hoffman Exhibit BF marked for identification)

Q Mr. Lederman, as somebody who has been to seven hundred dinners and worked for the company for several years, I take it you are familiar with offering statements, am I right?

A Yes.

Q And you must have gone through them entirely page by page, am I right?

A Yes, I have.

Q Are you able to identify this particular document (handing)?

A It looks like an offering statement for Rio Rancho Estates.

Q I refer you -- by the way, do you observe the date on the offering statement?

A December 5, 1969.

Q All right.

I refer you to page 3, under Paragraph 5.

Do you recognize the language which appears in that particular portion of the offering statement?

A Yes.

Q This refreshes your recollection as to what was in that portion of the offering statement?

A Yes.

Q If I ask you a question about it in just a moment --

A I didn't read the entire paragraph.

Q Would you read the entire paragraph?

A Yes.

Q Just take a second and read it, please.

MR. DEVORKIN: Can Mr. Arkin identify the paragraph again?

MR. ARKIN: It is Paragraph 5 on page 3.

(Pause)

A Yes.

Q I take it that it was company policy, was it not, that the representations which salesmen made must come from authorized literature, isn't that so?

A That's correct.

Q With respect to the offering statement BF for identification which I just showed you, wasn't that offering statement --

MR. DEVORKIN: I object, your Honor. It is not in evidence.

THE COURT: It is not in evidence.

Are you offering it?

MR. ARKIN: I will offer it in evidence, then.

THE COURT: Any objection?

MR. DEVORKIN: I would just like to look at it, your Honor.

(Pause)

MR. DEVORKIN: Do you have a bound one, Mr. Arkin, so we can check it?

MR. ARKIN: If you will give me 791, which is your Exhibit, it may be bound.

MS. HYNES: 791 is your exhibit, Mr. Arkin.

MR. ARKIN: I thought it was your exhibit, but either one, it is all right.

MR. DEVORKIN: I just want to see a bound exhibit.

(Pause)

MS. HYNES: 791 was originally a government exhibit which was marked as a defendants exhibit and offered into evidence, so do you have the exhibit?

(Pause)

THE COURT: Look for AD, Mr. Arkin.

MR. ARKIN: This, again, is not bound, and it is also a xerox.

Is there a serious question on the xerox?

THE COURT: The date is different, too.

MR. ARKIN: On this one it is, yes.

MS. HYNES: Mr. Arkin, I have a bound volume of the December 5, 1969 offering statement which has been premarked as Government Exhibit 788.

(Handing)

MR. ARKIN: I would just assoon use this one.

Would you mark this, please?

THE COURT: Make that BF.

Any objection?

MS. HYNES: No objection.

MR. DEVORKIN: No.

THE COURT: All right.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit BF received in evidence)

Q I show you page 3, paragraph 5.

Do you agree that that is -- well, please read that (handing).

A All right.

(Pause)

A Yes.

Q Mr. Lederman, you testified on direct examination in response to Mr. Devorkin's questions that in about 1968 or nine, Mr. Miller and Mr. Geller suggested to salesmen that they tell prospective purchasers that the property was almost sold out, am I correct?

A Well, that would be about a year and a half or two years it would be sold out.

Q And it would be sold out in about a year and a half or two years?

A Yes.

Q But that that practice stopped once there was an acquisition of new property.

A Yes.

Q At the same time that you say that Mr. Miller and Mr. Geller suggested or intimated or whatever to salesmen that that could be said, you were aware, were you not, of the following language which appeared in offering statements, referring to Defendant Exhibit BF,

"Lots may also be purchased for speculative purposes but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years; that a percentage of the purchase price paid is included therein for use in advertising and development; and that in trying to make a resale the purchasers may be competing with the Company, which has thousands of lots to sell."

A Yes.

Q You knew that language was in that report, right?

A Yes.

Q And that every customer got one of these reports?

A Yes.

Q And that every customer had forty-eight hours after receiving it to rescind or cancel absolutely, am I correct?

A That's true.

Q With respect to the price increases about which you testified, you agree, do you not, that every price increase which was announced and of which prospective customers were informed actually took place?

A Yes.

Q So that when you told a customer that there was going to be a price increase in a few months, that was true?

A That's correct.

THE COURT: We will suspend for the day.

MR. ARKIN: Thank you.

THE COURT: Tomorrow morning we cannot start until 10:15 because I have some other matters that have to be disposed of in this courtroom, so we will see you at 10:15 in the morning.

(Judge and jury left the courtroom)

(In open court in the absence of the Judge and jury)

MR. KAUFMAN: The following 3500 material on Daniel Monaco was turned over on November 18, 1976:

3524-A, which is the combination of Monaco's grand jury testimony on 7/22/75 and his deposition on 7/1/75.

3524-B, which is a two-page memorandum of understanding, dated June 24, 1976.

3524-C, which is a criminal information naming Daniel Monaco as a defendant.

3524-D, Daniel Monaco's grand jury testimony dated July 9, 1976.

3524-E, which is a letter which is undated to "Dear Friends" from Daniel Monaco as tour director.

3524-F, which is a letter dated March 11, 1975 to Mr. and Mrs. Olaf Hansen, signed by Daniel Monaco.

MS. HYNES: This morning the government turned over as 3517-B a one-page letter signed by Nicholas Masone and turned over this afternoon a letter dated April 2nd, 1976 to John C. Schettino, Esq., signed by

Patricia M. Hynes, relating to an agreement with Mr. and Mrs. Masone.

(Adjournment taken to Friday, November 19, 1976, at 10:15 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
David Jones (Resumed)		1728	1745	
Moeton Lederman	1751	1854		

EXHIBIT INDEX

Defendant Rio Rancho	Identification	In Evidence
AW	1728	1729
AX	1731	1732
AY	1736	1736
AZ	1739	1740
BA	1742	1742
BB	1743	
BC	1744	1744
Defendants Howard Friedman and Henry Hoffman		
BD	1896	
BE	1896	
BF	1902	1905
Government		
146-AA	1750	1750

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

November 19, 1976
10:20 A.M.

Trial Resumed

(In open court - jury not present)

MR. FLEMING: Your Honor, we have come across one witness, at least, who was given immunity by the government, and before that witness testifies, I would like the opportunity to speak to your Honor about the questioning of the witness.

It has to do with the question with the -- the way the question was phrased is, "Were you promised if you told the truth you would not be prosecuted," and I would take objection to that language and I would --

THE COURT: I know your reason for argument. I will overrule your objection, because that was the promise that was made.

MR. DEVORKIN: The Second Circuit, your Honor, has recently affirmed the very use of that question on direct examination.

THE COURT: It is framed in the language used with the witness.

MR. FLEMING: I understand, but it -- then I will call one of the assistants and have him testify the last time a government witness was prosecuted for perjury.

THE COURT: I don't think I would allow that, either.

MR. FLEMING: I understand.

What I would like to do, your Honor, is maybe give you something on it and see if I can persuade you to the contrary, although I know my success in that --

THE COURT: Make your record if you wish.

MR. FLEMING: Okay.

(Jury present)

MORTON LEDERMAN, resumed.

THE COURT: You may proceed.

CONTINUED CROSS EXAMINATION

BY MR. ARKIN:

Q Good morning.

When we left off yesterday, Mr. Lederman, I was going to ask you about that testimonial dinner Mr. Friedman attended.

Do you remember what year that was?

A No, I don't.

Q Do you recall that Mr. Friedman attended that dinner and gave a speech about the building or the proposed building of the new Ampex plant on Rio Rancho Estates?

A I don't really recall exactly what his speech was at that time.

Q You do recall that he gave a speech at some point about the building of the Ampex plant?

A I recall something about the Ampex plant, yes.

Q Do you know what the Ampex plant is?

A It was in the industrial park in Rio Rancho.

Q Wouldn't it have been closer to the Panorama Inn?

A Yes, yes. It was further south than the --

Q Do you know if that was the plant built by Ampex which is a tape recording manufacturer?

A Yes.

Q And that they proposed to hire 250 people?

A Something like that, yes.

Q The plant was actually built?

A I saw it there, yes.

Q And was a functioning plant?

A Yes.

Q Now, does that refresh your recollection that Mr. Friedman attended that testimonial dinner to inform whoever was there about the building of that plant?

A I recall the mentioning of the Ampex plant, yes.

Q And that he gave his twenty minute speech about the Ampex plant and then left?

A I don't recall whether he left immediately or not.

Q You don't recall either way?

A That's right.

Q Yesterday you testified briefly about the fly and buy program, is that correct?

A Yes.

Q And that was a program where you brought people out to or you attempted to persuade people to come out to New Mexico to see Rio Rancho and then sell property out there, am I right?

A Yes, sir.

Q And the idea of the fly and buy program was to show people exactly what it was before they bought it, am I correct?

A That's correct.

Q And you had fly and buy dinner parties?

A Yes.

Q At the fly and buy dinner parties, you didn't sell property right there?

A No, we did not.

Q Do you remember preparing a script?

A Yes, I do.

Q For the fly and buy parties?

A Yes.

Q Is that yes?

A Yes.

MR. ARKIN: Mark this.

(Defendants Howard Friedman and Henry Hoffman Exhibit BG marked for identification) xxx

Q Mr. Lederman, I ask you to cast your eye over BG for identification, and tell me if you recognize it (handing).

A Yes, I do recognize it.

Q Is that the fly and buy script, sir?

A Yes, it is.

MR. ARKIN: I offer it.

MR. DEVORKIN: Can you just fix a date for when it was used?

MR. ARKIN: Certainly.

Q Mr. Lederman, when was the fly and buy program instituted?

A Around September of 1974.

Q Would this script, then, have been prepared around September of 1974?

A Around then, yes.

MR. DEVORKIN: May I have just a brief voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q Mr. Lederman, there is some handwriting on Defendant Exhibit BG for identification, correct?

A Yes, there is.

Q Do you know whose handwriting that is?

A Yes. It's mine.

Q Is that true of all of it?

MR. ARKIN: I didn't hear that question, Mr. Devorkin.

Q Is that true of all of the handwriting?

A Yes.

MR. DEVORKIN: No objection.

(Defendants Howard Friedman and Henry

Hoffman Exhibit BG received in evidence)

MR. ARKIN: Your Honor, in the interests of expedition rather than asking leave to read that short script to the jury, may we pass out copies to the jury for reading during the recess?

THE COURT: Yes, you may.

MR. ARKIN: Thank you.

THE COURT: Don't give it to them now, only during the recess, otherwise they will start reading it now and not listen to your questioning.

MR. ARKIN: I have no more questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

XXX BY MR. DEVORKIN:

Q Mr. Lederman, did the fly and buy program begin after the grand jury investigation in this case?

A When was the --

MR. ARKIN: Excuse me, I object, your Honor.

THE COURT: Sustained.

MR. ARKIN: And I really ask that it be stricken.

THE COURT: Strike that question and tell the jury to ignore it.

Q Mr. Lederman, I believe on cross examination

Mr. Fleming asked you about the tours, not the fly and buy trips, but the tours out to Albuquerque that the company ran.

A Yes.

Q And you stated, I believe, and correct me if I am wrong, that the --

MR. FLEMING: What page?

MR. DEVORKIN: I believe it is 1864 of the transcript.

Q -- that the people were shown Albuquerque and they had a pretty good time on their tour.

A Yes, they did.

Q Were the people taken around in a group on the tour?

A Yes, they were.

Q With buses?

A On a bus or buses.

Q Was there somebody from Rio Rancho with them at all times?

A Yes.

THE COURT: You mean while they were on the bus?

Q While they were in a group.

A Yes, while they were in a group.

Q Would it be fair to say that the people were kept pretty busy on these tours?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q There was a regular schedule of activities, correct?

A Yes, there was.

Q And occasionally they would have a leisure hour?

MR. FLEMING: Objection.

THE COURT: Sustained.

You put into evidence a schedule --

MR. ARKIN: I put it in, your Honor.

THE COURT: It is there before the jury.

MR. DEVORKIN: I understand that. It is a preliminary question. It is a characterization of something by you of something in evidence.

Q Do you recall the itineraries of the tours, Mr. Lederman?

MR. FLEMING: If your Honor please, it is in evidence. I think it is cumulative and irrelevant.

THE COURT: Show it to him.

MR. ARKIN: It is an exhibit in evidence and we would be happy to show it to him.

Here, Mr. Devorkin, I am giving you Defendants Exhibit AI (handing).

MR. DEVORKIN: Thank you.

Q Would you take a look at Defendant Exhibit AI, which refers, I believe, to free time on each day. Is that correct?

A Yes, it does.

Q Based upon your experiences on the tour and your observations when you were on tours, what did most people do at their leisure time in those free hours?

MR.ARKIN: Objection.

THE COURT: Sustained.

Q You were asked by Mr. Fleming, I believe, on cross examination, page 1888 of the transcript, about visits by state inspectors to dinners which you attended.

Do you recall that?

A Yes, I do.

Q Do you personally know what standards the inspectors applied to judge the dinners or the representations made at the dinners?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Did you ever have any conversations with the inspectors?

MR. ARKIN: Objection.

THE COURT: Put an inspector on the stand if you want to. You cannot do it through this witness.

Q Do you recall Mr. Arkin asking you on cross examination about the NYA numbers?

A Yes, I do.

Q That were on literature?

A Yes.

Q Do you recall him asking you what those numbers meant?

A Yes, I do recall.

Q What was your understanding about whether the existence of those numbers on that literature meant that the state had approved of the representations in the literature?

MR. FLEMING: Objection.

THE COURT: Overruled.

A As far as I knew, it was just -- it was a matter that they had been filed with the state.

Q And what about approval?

A The property reports always stated that the state neither approves nor disapproves of the information.

MR. ARKIN: If your Honor please, I object to the answer and ask that it be stricken, because what the property report states is a matter of record in this court, it is in evidence, it is on the front page of the offering statement and there is no need for this witness to characterize it, it can be read to the jury.

THE COURT: Overruled.

Q I believe you were also asked on cross examination on page 1878 of the transcript about the licensing of sales personnel by the State of New York and tests that sales personnel had to take, correct?

A Yes.

Q You took your test before you came to AMREP, is that correct?

A Many years before I went.

Q Was that also true of other salesmen who worked for the company?

A Some of them, yes.

Q Do you recall whether the license examination covers land investments or value of vacant subdivided land?

A I don't recall.

Q I believe you were also asked on cross examination at page 1886 of the transcript about seeing people read property reports at the dinners.

Do you recall that question?

A Yes.

Q Were sales people given any instructions or training about what to do if customers began to read anything during the speaker's presentation?

A While the speaker was at the podium, they were told to ask the people to put the literature down so they could listen to what the speaker had to say.

MR. DEVORKIN: Can I have DEfendant Exhibit BF?

May I just have a moment, your Honor?

(Pause)

Q Do you recall Mr. Arkin showing you a property report yesterday which is Defendant Exhibit BF -- I am sorry, an offering statement from the State of New York dated December 5, 1969?

A Yes, I do.

Q And do you recall looking at page 3, paragraph 5, some language about the difficulty of resale and certainly other items?

A Yes.

Q Please take a look at Government Exhibit 146-S in evidence, which is an offering statement dated April 28, 1969.

(Handing)

Take a look through it carefully.

(Pause)

THE COURT: What do you want him to read?

MR. DEVORKIN: I am sorry?

THE COURT: What do you want him to read

specifically?

MR. DEVORKIN: I wanted him to look through that statement carefully.

THE COURT: The whole thing?

MR. DEVORKIN: Well, it is not --

THE COURT: Point to what you want done. That is a finely printed document of at least ten pages, if not more.

Q Mr. Lederman, would you take a look at paragraph 5, page 3, of Defendant Exhibit BF (handing).

Is that language in paragraph 5 anywhere in Government Exhibit 146-S?

MR. ARKIN: If your Honor please, the exhibits speak for themselves. I object.

THE COURT: Somebody is going to have to inform the Court and the jury whether it does or does not.

Do you want to make a concession it does not appear in there?

MR. ARKIN: It does not,your Honor.

THE COURT: All right. You got a concession.

MR. ARKIN: The exhibits speak for themselves.

THE COURT: I know it speaks for itself, but neither the jury nor the Court has seen it and it has not spoken to us, Mr. Arkin, somebody has to tell us.

MR. ARKIN: Yes, your Honor.

Q You were also asked, I believe, on cross examination about questions people asked you about their investment in Rio Rancho lots, specifically, what you told people if they asked when they could make money on their Rio Rancho investment in one or two years.

Do you remember that?

A Yes, I do recall that.

Q Was your response made to their questions?

A Yes.

Q And you told them if it was for one or two years, they were interested in it, it was not for them, correct?

A Yes, that's correct.

Q Over what period of time did you consider this to be an investment from which the buyer could make money?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Do you recall Mr. Fleming asking you about automobiles in cross examination?

A Yes, I recall.

Q And he asked you if, as a businessman, you had ever -- if you knew that the increase in the price of automobiles, at least in substantial part, was with respect to the increase of cost to the manufacturer in building the automobile.

Do you recall that answer?

A Yes, I recall that.

Q And he also asked you whether you had ever been offered by an automobile dealer the right to purchase a 1977 model at 1976 prices if you committed yourself to buy the 1977 model before the models came on the floor.

Do you remember that?

A Yes, I do.

Q You said that you did.

A Yes.

Q Mr. Lederman, have you ever bought an automobile for the purpose of later selling it at a profit?

MR. ARKIN: Objection.

THE COURT: Sustained.

The purpose of Mr. Fleming's proof at that time was that you advised the purchaser that the price was going up and, therefore, if you wanted to get that land at the cheaper price, buy it now, because next week the price was going up, and the testimony from your witness so far has been that everytime a price increase was announced, they actually carried it through.

MR. DEVORKIN: Your Honor, I agree. But the testimony also is that --

THE COURT: The purpose of the testimony elicited by Mr. Fleming which you are now directing does not come within the question you just put to the witness.

Next question.

Q Mr. Lederman, do you recall the statements that were made to customers, homesite owners at homesite owner dinners, about what profits they could expect in lieu of price increases?

MR. FLEMING: Your Honor, that was covered on direct, if your Honor please.

MR. DEVORKIN: Your Honor, the point I am making is --

THE COURT: Wait.

It is your job to frame a question properly, it is not my job.

Now, reframe your question.

Q Price increases by Rio Rancho occurred, is that correct?

A Yes, that's correct.

tl

T2A

Q And you told homesite owners about the pending price increases, correct?

A Yes.

Q You encouraged them to buy at that point, correct?

A Yes.

Q When you told them about the price increases, for example, at a homesite owner dinner, what reasons, if any, did you give them to buy when you mentioned price increases?

MR. ARKIN: Your Honor, that has been asked and answered on direct.

THE COURT: That is true.

MR. DEVORKIN: I have no further questions.

MR. ARKIN: Your Honor, may I have just a couple on recross?

THE COURT: You may step down.

MR. FLEMING: Your Honor, simply because of something the witness said to Mr. Arkin.

THE COURT: No, nothing came out on redirect that was not covered on cross.

MR. FLEMING: It was a question that he had addressed to Mr. Arkin.

MR. ARKIN: May we approach the side bar?

MR. FLEMING: It is not that important to me.

THE COURT: Next witness.

(Witness excused)

MR. DEVORKIN: I would like to offer at this time Government's Exhibit 549, page 4, the second to the last paragraph.

THE COURT: Show it to counsel.

(Pause)

MR. ARKIN: We have no objection to the whole speech, your Honor, and we would suggest that a copy be made and have the jury read it.

MR. DEVORKIN: I am not offering the whole speech.

THE COURT: Do you want to offer the whole --

MR. ARKIN: Sure, rather than just take one paragraph out of the context of the entire speech.

THE COURT: Let the government put in what they want to put in and then you can put in what you want to put in. The government only wants to offer that.

(Government Exhibit 549, page 4, the second to the last paragraph, received in evidence) xxx

(Pause)

THE COURT: All right.

MR. DEVORKIN: May I read that paragraph, your Honor?

THE COURT: All right.

(Mr. Devorkin read from Government's Exhibit 549 in evidence to the jury)

THE COURT: Go ahead. What's next?

MS. HYNES: The government calls Nicholas Thomas Masone.

NICHOLAS THOMAS MASONE,

called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. HYNES:

XXX

Q Mr. Masone, I am going to ask you to keep your voice up so all of the jurors can hear the answers to your questions.

How old are you?

A Forty-seven.

Q Where do youlive?

A Cedarhurst, Long Island.

Q Are you married?

A Yes.

Q What is your wife's name?

A Charlotte.

Q Do you have any children?

A Four.

Q What is your educational background?

A A year's elementary, two years high school.

Q Are you presently employed?

A Yes.

Q Where are you employed?

A Shawney Village Country Club, Stroudsburg, Pennsylvania.

Q What do you do for that organization?

A I am a salesman.

Q What do you sell?

A We sell a time-sharing concept?

THE COURT: What?

THE WITNESS: Time-sharing concept.

THE COURT: You had better talk a little slower in addition to louder. I don't think we are catching everything you are saying.

Q Can you tell the jury what the time-sharing concept is that you are selling?

A It's a concept where you buy a two week vacation in a certain villa and you have the option to exchange that two week vacation at the Shawney Village Country Club with a reciprocal other village throughout the country.

THE WITNESS: Is that better?

THE COURT: Yes.

THE WITNESS: Thank you.

Q How long have you been employed by that company?

A Since March.

Q Before that -- March of what year?

A March of this year.

Q Before that where were you employed?

A Before that I worked for GAC Real Estate firm.

Q How long did you work for GAC?

A That was only for a period of about two or three months.

Q What was the business of GAC?

A Land sales.

Q Where were they selling land?

A In Florida.

Q Was that vacant land?

A Yes.

Q Before you worked at GAC where did you work?

A I worked for ATC Realty Corporation.

Q When did you first join ATC Realty Corporation?

A April of '71, I believe.

Q Mr. Masone --

THE COURT: Wait, finish it.

When did you leave?

Q When did you leave?

A August of '75.

THE COURT: Go ahead.

Q Mr. Masone, are you testifying here today pursuant to an agreement with the government?

A Yes.

Q Was that agreement reduced to writing?

A Yes.

Q I show you Government Exhibit 1400 for identification.

MR. HOFFINGER: If your Honor please, may we put something on the record at this time.

THE COURT: It has already been put on. Do you want to add to what Mr. Fleming has said?

Didn't you talk to him?

MR. FLEMING: I did, your Honor.

MR. HOFFINGER: I didn't realize it was put on the record.

THE COURT: It was, but if you want to put it on, come over here.

MR. FLEMING: We are talking about that document.

THE COURT: I understand.

(At the side bar)

THE COURT: You are making the same objection Mr. Fleming made before?

MR. HOFFINGER: That is what I say, if it was on the record --

THE COURT: It is on the record.

Q Do you recognize that document, Mr. Masone?

A Yes.

Q Is that the agreement that you have with the government?

A Yes.

MS. HYNES: I offer Government's Exhibit 1400.

MR. FLEMING: I Object to it, if your Honor please. I think your Honor should read it before your Honor rules.

THE COURT: Let me see it.

MR. FLEMING: I do have one prior District Court experience that I could bring to your Honor's attentio if it would be relevant.

THE COURT: Do you have a better copy than this?

MS. HYNES: No, your Honor, I do not at this point. We are trying to find a better copy and we can substitute it.

MR. FLEMING: Could we come to the side bar for a moment?

THE COURT: Sure.

(At the side bar)

THE COURT: Yes, I have read it, Mr. Fleming.

MR. FLEMING: Two points, your Honor.

Your Honor understands well the basis for our objection. It puts the government's credibility in issue in the case since they are making a value judgment as to the truth of this man's testimony.

I think that is improper. An assistant cannot so argue in summation. The assistant cannot say, I believe the witness and this is, in fact, what this letter does.

Second, we did have a recent experience with Judge Pollack where he did exclude that type of representation, that is, that so long as I told the truth I would receive immunity.

Of course, a third thing is that this man is not even named as a co-schemere so you have to wonder what it means in any event or whether it is just not a way of getting this kind of credibility issue to the jury.

Fourth, the letter is misleading because there is not even set forth the perjury statutes. I think just in combination it is highly prejudicial. I happen to think it is a technique and amounts to nothing more than the prosecution having the United States government saying, we believe this man is telling the truth. We are vouching for it and an assistant couldn't say it in his summation.

THE COURT: But they don't know whether he is telling the truth until he has finished.

MS. HYNES: That is true, your Honor.

THE COURT: You can argue at the end that he is not telling the truth. Let the government convict him of perjury.

MR. FLEMING: I think your Honor can take judicial notice of the fact that at least to my knowledge, even in cases where there have been acquittals, no government witness has ever been prosecuted for perjury in this district to my recollection.

MS. HYNES: Mr. Felming cites his prior experience with Judge Pollack. I don't have firsthand knowledge of that but I do know that the Second Circuit has very recently ruled and I have the slip opinion, the name of the case is United States against Jose Araugjo, which has just come down within the last couple of months.

THE COURT: Not the last couple of months. If it was the last couple of months I would have read it. It was the last couple of weeks was the representation by Mr. Devorkin.

MS. HYNES: Maybe so.

THE COURT: I just finished October 25th and I haven't reached it.

MS. HYNES: We can hand it up to your Honor. In any event, the Court of Appeals specifically stated in a very similar context that the government was allowed to bring out on the direct examination its agreement with the witness and also the facts of that case were as the facts of this case are that in the opening statement by counsel statements were made about the witnesses the government would call and their credibility and indeed Mr. Fleming specifically made reference to the salesmen in their opening statements and made reference to the fact that they would be testifying for the government and their motives for testifying for the government.

Also, your Honor, the Koss case --

THE COURT: The only time I have ever seen this used was with a co-defendant or somebody named in the indictment.

MR. FLEMING: Exactly.

THE COURT: Because that is the basis we have indicted you, but we will not prosecute you. Here this is a year -- not a year, seven months after the indictment. It is down already.

You are saying here, we won't prosecute you for your participation in the fraud. If they had participated in the fraud in October, he should have been indicted.

That is my problem with this.

MS. HYNES: The exact language is "Your participation, if any."

Basically what the letter is that these people would not talk to the government unless we had an agreement with them so in order to talk to them we had to enter into an agreement.

THE COURT: You could have indicted them if you thought they were involved.

MR. FLEMING: That makes people talk to the government.

THE COURT: Mr. and Mrs. Masone cooperated .. fully. They will not be prosecuted for their participation, if any, of the frauds set forth in the indictment.

That seems to be the impression of this, you were guilty --

MS. HYNES: Your Honor, at the time --

THE COURT: If you had indicted them, I would have no problem with this. What you are saying is you are guilty, but we are letting you off.

MS. HYNES: No, we are not.

THE COURT: Why didn't you indict them?

MS. HYNES: We hadn't spoken to them. We didn't know what their participation was. We wanted to find out what their activities were, we wanted to find out what their participation, if any, was and we were not able to talk to them without entering into an agreement with them.

THE COURT: I am talking about -- this is April 2, 1976. You were before the grand jury for at least a year and a half on this case. You had a Federal Trade Commission parallel investigation going on. Didn't you know of Masone's involvement?

MS. HYNES: We knew that the Masones were sales people as many people were.

THE COURT: Did you bring them in to the grand jury?

MS. HYNES: No.

THE COURT: Did you try?

MS. HYNES: No.

MR. FLEMING: Did you interview or attempt to interview them before the indictment was returned?

MS. HYNES: I don't believe we did. We were interviewing sales people, your Honor, and the indictment that came down didn't name any sales people.

MR. FLEMING: This woman is mentioned by name in a New York Magazine article, his wife is described by name in a New York Magazine article by Anthony Wolf, Anthony Wolf taped a conversation at a sales dinner and Anthony Wolf is listed here as a witness. I don't know that she's identified in the book as Charlotte on real estate by Mr. Anthony Wolf. There's no question the government had knowledge of these people well before the indictment was returned.

MS. HYNES: I am not saying that. I think that's totally irrelevant. Whether we got around to interviewing them at that point or felt we had to bring them in to the grand jury is not the relevant part of it.

Now that it has been brought out before the jury that there's an agreement with this witness and that was the only way we could get to talk to these people was to enter into this agreement.

MR. FLEMING: You can bring out the agreement that you gave them immunity. I have no objection to that.

MR. HOFFINGER: This technique of putting your credibility at issue puts us at a tremendous disadvantage.

THE COURT: That has always been done.

MR. HOFFINGER: It hasn't been done with somebody like this.

MR. ARKIN: The way the letter is drafted here seems to assume the existence of a fraud.

Line 6 of the first paragraph uses the language "participation, if any, in the fraud set forth in the indictment." I think somebody reading that could assume that there was a fraud. That bothers me, your Honor.

THE COURT: It says "in the fraud set forth in the above referenced indictment."

Why is that different from the guy who is indicted? He has been charged with involvement in the fraud and you go before the jury and you say here, I gave him immunity. Here is the letter.

MR. FLEMING: We never gave immunity. We used to promise that we would bring their cooperation to the attention of the sentencing judge.

THE COURT: When was the last immunity statute passed?

MR. FLEMING: No. Sil Molto was just different on these things. The point is that when I had an accomplice witness on the stand, I would ask if any promises were made and he would say, yes. The promise that any cooperation I gave would be brought to the attention of the court. I never leveraged that by saying "and you are going to be prosecuted if you don't testify truthfully."

THE COURT: I have read so many of these. I will let it in.

MR. FLEMING: Could we -- I would just like to add to Mr. Arkin's statement, they don't even say the alleged fraud set forth in the indictment. And I think the letter is objectionable without regard to whether he can testify to what the promise was.

They say "in the fraud." They mean to say "alleged fraud" in their letter.

THE COURT: Are you willing to amend that letter to put the word "alleged" in?

MS. HYNES: Your Honor, I think that rather than have the letter amended, your Honor can give an instruction to the jury that an indictment is merely a charge.

MR. FLEMING: It is still credibility. It is the government vouching for their case stating they believe everybody is guilty. They can't do that.

MS. HYNES: Mr. Fleming, with all due respect to the years you spent in the prosecutor's office, I think there were people who testified on trials that were not named as co-defendants and still had agreements with the government with respect to their cooperation.

MR. FLEMING: No question.

THE COURT: He doesn't deny that. He didn't put the perjury part into it.

MR. HOFFINGER: That's right, that's a technique

MS. HYNES: Your Honor, that is always in these agreements.

THE COURT: You have raised the point as to what Mr. Fleming did when he was here and he says in the years he was here the office never put the perjury part into the immunity.

MR. FLEMING: That's right.

MR. HOFFINGER: It started a few years ago and I remember the case you have. That was the case they began this technique of bolstering the credibility.

THE COURT: I am letting him make his record because, obviously, he is entitled to have that record made.

I think you had better put the word "alleged" in there. That's all it is.

MS. HYNES: Your Honor, rather than amend the agreement that this witness actually has with the government, I think that your Honor --

THE COURT: I am not amending anything. You should have put it in in the first place.

MS. HYNES: I disagree with that.

THE COURT: I am sorry what you disagreewith. I have ruled.

(In open court.)

XXX (Government's Exhibit 1400 received in evidence.)

MS. HYNES: Your Honor, may I read from Government's Exhibit 1400?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1400 in evidence to the jury.)

Q Mr. Masone, who is Mr. Schettino?

A He was the lawyer that I retained.

MR. FLEMING: I cannot hear the witness, if your Honor pleae.

THE COURT: Keep your voice up and slow down.

THE WITNESS: A lawyer that I retained.

(Ms. Hynes continued reading Government's Exhibit 1400 in evidence to the jury.)

BY MS. HYNES:

Q Mr. Masone, you have stated that you came to work for was it AMREP Corporation or ATC, did you say?

A ATC Realty Corporation.

Q ATC Realty and you came to work for ATC Realty in April of 1971?

A Right.

Q Before coming to work for ATC Realty, can you briefly describe the jobs thatyou had?

A Prior to working for ATC, I worked for a leasing corporation, Intercontinental Capital Corporation as a salesman.

I worked as a furniture salesman. I worked as a restaurant manager. I have been involved in construction. That's basically what it is.

Q How did you come to work for ATC in April of 1971?

A My wife Charlotte Masone used to work for ATC Realty --

MR. FLEMING: Your Honor, I am sorry. The witness goes so quickly I cannot follow him.

THE COURT: You have to slow down.

THE WITNESS: I am a little nervous.

THE COURT: Then relax.

Q Can you speak slowly, Mr. Masone, and take your time.

A My wife used to work for ATC Realty Corporation and at the time that I was going out with her I used to pick her up at these various dinners and I got to know Peter Miller and Len Geller.

Q Who was Peter Miller?

A He was the vice president of ATC Realty.

Q Who was Leonard Geller?

A I believe he was the general manager.

Q In what period of time are you talking about, what year or years?

A That was around 1970.

Q Then what happened in April of 1971?

A I was offered a job by Peter Miller and Len Geller.

Q After you were hired by Mr. Miller and Mr. Geller, what was your first assignment?

A My first assignment was to start a home sit program.

Q A home sit program?

A Right.

Q Can you describe to the jury what a home sit program is?

A A home sit program is where a salesman goes into a customer's home and tries to sell them what we were selling at that time.

Q Did you receive any training prior to doing this home sit program?

A Very little.

Q Before you actually began selling the property what was your training, if any?

A My training was they sat me down with a salesman at a dinner and he told me to listen to a particular salesman and that's how I learned.

Q Do you recall what salesman you sat down with?

A No, I sat with various salesmen every night of the week.

Q How long did this orientation with your sitting with salesmen take place?

A Not too long because I was pretty familiar with the product because of my wife.

Q Was your wife a sales woman for ATC Realty?

A Yes.

Q Do you know when your wife first became a sales woman for ATC Realty?

A I think it was sometime in '68 or '69, I am not sure.

Q Can you describe to the jury as best you recall what the home sit program was, what did you do when you came to a person's home?

A Well, we went into a person's home with a presentation book and a camera and we would go through various pages of the book and explain to them who AMREP was and what they did and so on, you know, down the line and then we showed them the film on Rio Rancho.

Q Do you recall what film you showed them?

A The totle of the film? Your Golden Future, I believe it was.

Q Was there a prepared script for you to use in the home sit program?

A No, we didn't have a prepared script, but we had like the story with each page as we turn it.

Q Do you recall what was in this presentation book that you spoke about?

A The presentation book had -- it had a page on AMREP and who AMREP was. You are talking about, I mean, what we actually used?

THE COURT: Yes.

Q I am asking you --

THE COURT: You claim you went in with a book.

THE WITNESS: Yes.

THE COURT: You are being asked what was in that book.

THE WITNESS: The best I can remember is that we had a page of who AMREP was and what the assets of AMREP was and what they were involved in and then we had various pages of -- showing Howard Friedman breaking ground in the shopping center for the AMREP Corporation and then we had a little pink map that showed the area of Rio Rancho and Albuquerque.

(Continued on next page.)

Q Let me show you Government's Exhibit 271 in evidence and ask if you can identify this (handing).

A Yes. This is one of the maps that we used.

Q Is this a map that was in the booklet for the home sit program?

A Yes.

Q What else do you recall was in that book?

A Each salesman made up his own book, you know, and he put into the book what he felt more comfortable with.

Q And did you put into that book various pieces of promotional literature?

A Yes.

Q And what do you recall you said to the customer in the home concerning a purchase of land at Rio Rancho?

A Well, regarding the purchase of land in Rio Rancho, number one, we had to build up a rapport --

MR. FLEMING: Sorry to interrupt. Is the foundation for this that he always said the same thing? If it is not, I object. I would like more specificity.

THE COURT: I gather it is.

MS. HYNES: I will ask the witness, your Honor.

Q Mr. Masone, when you went into the home and made a presentation -- first of all, let me ask you, how long did you do this home sit program?

A It was about three of four months.

Q And how many visits did you actually make to the home?

A Maybe about five.

Q And --

A Four or five.

Q What was your position vis-a-vis the home sit program?

A At the time that I started with ATC, I started as the home sit manager.

Q What were your responsibilities as the manager of the home sit program?

A My responsibility was to hire salesmen and possibly train them and to set up appointments.

Q When you trained them, what did you do?

A Well, I had Len Geller along with me when I trained them because I didn't know that much about it. I don't know. We took them into a room and we tried to teach them the product of Rio Rancho was concerned and how to sell it.

Q Were the salesmen trained to say certain things to customers when they visited their homes?

A Yes.

Q Was there a standard presentation that the salesman was to give to the customer?

A More or less, yes.

Q And you say that that presentation was not reduced to writing?

A No.

Q The presentation that you gave to customers in their home on the five or so occasions that you testified to, were they basically the same presentation?

A Yes.

Q And was that basically the same presentation that you trained other salesmen to give in home sit programs?

A Yes.

Q And can you tell the jury what your best recollection is of what that presentation was?

A Well, the presentation was, number one, to build up a rapport with the people in the home because that is the basic function of any sale, to get the people to like you.

MR. FLEMING: Will you strike the last part?

THE COURT: Overruled.

A And then we went -- we would open a book and we would show the credibility of AMREP Corporation and who they were and how they got involved in Rio Rancho; and then we would go through various phases of how -- through various pieces of literature explaining how the Rio Rancho has grown from being a nothing to being a, you know, self-contained community and so on.

Q You said that part of the book that you used in the home sit presentation contained this map, 271.

What, if anything, did you say about that map in the home sit presentation?

A Well, we would show how Rio Rancho -- how Albuquerque was hemmed in on three sides. We would show how it was hemmed in on the east side by the Siandia Mountains and on the south with the Indian reservations and federally reserved lands, and then we would also show how the only possible -- the way that Albuquerque itself can grow, and it was growing, was northwest through Rio Rancho Estates.

Q Did you make any comparison to an investment in land and an investment in other types of -- I am sorry, strike it.

Did you make any comparison between an investment in real estate and other investments?

A Yes. We used to compare real estate to money in the bank, to mutual funds, stocks, bonds.

Q And what was said?

A Well, we used to say that real estate was always a good investment for thesimple reason that real estate always increases in value. It's not like -- it's it's not like gambling with, you know, mutual funds or stocks, where you have the possibility, like, of losing your money.

Q And what was said about the rate of return, if anything, on an investment in real estate as opposed to an investment in the bank or stocks or mutual funds?

A Are you talking about a rate of return of an investment in Rio Rancho or just normal land?

Q What did you say?

A Well, we used to say the normal increase at what we were getting at Rio Rancho was approximately 20, 25 per cent a year.

Now, if you wanted to compare this with an investment, with money in a bank, where you only get maybe 5 or 6 per cent per year, well, how can you compare it? There is no comparison.

Q You said that you gave these home sit presentations in 1971?

A I did it for three months, about three or four months when I started.

Q Was part of the presentation -- was there any statement made about how much of the Rio Rancho land had already been sold out?

A Yes.

Q And what was said?

A We said that approximately 85 to 90 per cent of it was sold out.

Q And was anything said as to what would happen after the remaining part of the land would be sold out?

A Then we would say we would turn around and tell the customer that we would open a resale office eventually, you know, once we were sold out.

MR. FLEMING: What?

THE COURT: Slow down and repeat the answer.

A Do you want to repeat the question, please?

MS. HYNES: Can we have the question repeated.

(Record read.)

A Yes. We would say that once the property was sold out at Rio Rancho Estates, at that particular time that we would -- we intend to open up resale offices.

Q Was any indication given to the customer as to when the resale office would be set up?

A Well, we used to say in about two years.

Q You said that you talked to Len Geller about the presentation for the home sit program.

Did you review the presentation for the home sit program with Mr. Geller?

A Well, yeah, we went through it, like, very casually, you know, with the men in the room.

Q So it was you and Mr. Geller and the salesmen --

A Well, I was learning myself at the same time because I wasn't that familiar with it.

Q And --

THE COURT: What? I didn't get that answer.

Read it back to me.

(Record read.)

Q Was Mr. Geller teaching you the presentation?

A Yes.

Q You said that you were a home sit manager for three or four months.

How were the appointments made for salesmen to visit someone in a person's home?

A Well, ATC or AMREP would put an ad in the paper and people would respond to this particular ad. Then he would call up these people and set up the appointment for, you know, the individual salesmen.

Q And at the end of three or four months, what happened?

A I gave it up. I just couldn't take it.

Q Did the program continue?

A Yes.

MR. FLEMING: What was that answer?

THE COURT: He gave it up, he just couldn't take it.

MR. FLEMING: He couldn't take it. All right.

Q What was it that you couldn't take?

A I wasn't making any money.

MR. ARKIN: Objection.

MR. FLEMING: What?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

Q I didn't hear your answer.

THE COURT: He wasn't making any money.

Q What did you do after you stopped being the home sit manager?

A I became a dinner party salesman.

Q And were you assigned to a sales team?

A Yes.

Q Who was the team manager, if you recall?

A I don't remember because I worked for several of them, you know, during the time that I was there.

Q During the time that you were at ATC, who were your team managers?

A Morty Hochberg, Steve Bondy, Paul Stowe, I believe. I'm not too sure about him, though. Morty Lederman. That's about all that I can remember.

Q In what geographical area did you have these sales dinners?

A We went all over, all over the five boroughs and upstate New York.

Q How frequently were sales dinners held?

A Every night of the week.

Q Was there also a Sunday dinner?

A Yes.

Q What was a Sunday dinner?

A That was called the Sunday referral dinners.

Q And what did a Sunday referral dinner mean?

A Sunday referral dinner meant where you would get a property owner to bring their friends over.

Q What period of time did you sell at sales dinners during the week?

A I don't understand that question.

Q What period of time -- you started to sell at a sales dinner, you said, sometime in 1971?

A Yes.

Q And did you continue to sell at these weeknight sales dinners?

A Yes.

Q And until what time did you continue to sell at the weeknight sales dinners?

A Up until around January of 1973.

Q And after January of 1973, what did you do?

A I was put on a VIP program.

Q And after January of 1973, did you continue to sell at Sunday referral dinners?

A Yes.

Q I am going to direct your attention to the period 1971 until January of 1973, when you were selling at the weeknight sales dinners.

What would happen when you would arrive at the restaurant? What did you do?

THE COURT: May I see counsel at the bench, please.

(At the side bar.)

THE COURT: I think we have reached the point now where I have got to stop on accumulation.

We have had this testimony, a review of what happens at the dinner, from the time they walked in until the time they leave from Mandel, who was head of the dinner program; from Zaknich, who became a vice president in charge of sales; from Bondy, who was a salesman for four years; and from Lederman, who was a sales manager for about four years. So I am going to stop. You can't repeat it.

MS. HYNES: I agree and I will abide by your Honor's ruling.

The gentlemen that you just indicated, all had managerial responsibilities. We haven't had a salesman who actually sat at the table.

I will be brief. There is one --

THE COURT: Mr. Bondy was a salesman.

MS. HYNES: Okay.

Your Honor, there is one point that I think we have to bring out and that, basically, is the use of the property reports at the table and that is my --

THE COURT: That you may do, but nothing else.

(Continued on next page.)

XXX

(In open court)

CONTINUED DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Masone, at the week night dinners that you attended during 1971 until January of 1973, were the sales people responsible for setting up the tables?

A Yes.

Q And what, if anything, was placed on the tables during that period of time?

MR. FLEMING: By him?

Q By you.

A Various pieces of -- all types of literature.

Q Was this promotional literature?

A Yes.

Q I show you what has been marked as Government Exhibit 792 for identification.

(Handing)

Do you recognize this?

A Yes.

Q What is it?

A It is an offering statement.

MS. HYNES: The government offers 792.

MR. ARKIN: May I see it, please?

MS. HYNES: Yes.

MR. ARKIN: We have no objection to 792.

(Government Exhibit 792 received
in evidence)

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Q Mr. Masone, were offering statements similar to Government Exhibit 792 in evidence place on the tables by you during the period that you were a sales person at dinners from 1971 to January of 1973?

A No.

Q Did you receive any instructions with respect to the placement of offering statements on the tables?

A It didn't matter whether we put them on or not.

Q That is not my question.

My question is, did you receive any instructions with respect to --

A I'm sorry.

No.

Q Did you attend -- strike that.

Did you team manager or team captain give you any instructions with respect to what material had to be placed on a table?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Well, yes. He primarily told us to put on, you know, the promotional material.

gtjw 3 Masone - direct

Q Did your team captain --

MR. FLEMING: I object to "primarily".

THE COURT: Sustained.

We want to know exactly what he said to you. It is important.

THE WITNESS: He said to put various pieces of literature on the table.

THE COURT: What pieces of literature did he refer to?

THE WITNESS: Like "This is My Land" -- well, I really don't recall them, your Honor, because I haven't, you know -- it's been quite some time.

MR. FLEMING: I move to strike his entire testimony on that question.

THE COURT: Overruled.

What else?

THE WITNESS: Well, like, This is My Land, and there was some promotional material, like the Albuquerque-- I don't recall the name of the article. It was like an Albuquerque Journal.

THE COURT: Do you have a copy to show the witness?

Q Mr. Masone, I am going to show you, again, 271 in evidence and 388 in evidence.

(Handing)

Were those pieces of literature that were placed on the table?

A Yes.

Q And were you instructed to place those pieces of literature on the table?

A Yes.

Q And who instructed you to place those pieces of literature on the table?

A Our team manager.

Q Okay.

Was there any choice left to the salesmen as to what literature, promotional literature was put on the table?

MR. FLEMING: I make the same objection, if your Honor please.

THE COURT: Sustained.

MR. FLEMING: He was asked a question. I don't think he responded.

THE COURT: Either he was told to put it on or not to put it on.

The question is stricken. Reframe it.

Q Mr. Masone, you mentioned that you were instructed by your team manager to put certain pieces of promotional material on the table?

A Right.

Q Were you permitted to put other pieces of promotional material on the table left to your own discretion?

A No.

Q Other than This Is My Land and the map that you have in front of you, 271, were there other pieces of promotional material that were put on the table?

A Yeah. There was one called the Accent on Albuquerque.

Q Accent on Albuquerque?

A Right.

Q And was that --

A A Harper's review. I'm starting to remember now. Like, a Harper's review article.

Q What else do you recall?

A That's about all that I recall, but there were -- you know, there were a few others.

Q Other than the instructions about the pieces of promotional material to put on the table, did you receive any other instructions from your team manager with respect to what went on the table?

MR. ARKIN: Objection. That has been asked and answered.

THE COURT: Overruled.

A You want to rephrase that, please? I don't understand what you mean.

Q You identified promotional material that you were instructed to put on the table.

A Yes.

Q Did you receive instructions to put anything else on the table?

A No.

Q To your knowledge, during the period 1971 until January of 1973, when you were selling at week-night dinners, were property reports or offering statements put on the tables?

A No.

MR. FLEMING: What?

Did youfinish your question?

MS. HYNES: I finished my question, yes.

THE COURT: I don't think the question was finished.

MR. FLEMING: I didn't, either.

MS. HYNES: I am sorry. Read back the question. Maybe I missed something.

(Record read)

MR. FLEMING: I object to the question.

THE COURT: Overruled.

Q Was it a general practice not to put the property reports and offering statements on the table?

MR. ARKIN: Objection.

A Yes.

THE COURT: Sustained.

MR. ARKIN: Strike the answer.

THE COURT: He can say what he did and he says he never did it and he says he was never told to do it. That's all he can testify to.

MR. ARKIN: May we have his last answer stricken, your Honor?

THE COURT: Strike his answer.

Q Was there a time, was there ever a time during the period when you were selling at week night dinners from 1971 until January of 1973 when property reports were put on table where you were selling?

A Once in a while they were.

Q And once in a while would you put them on the table?

A Yes.

MR. FLEMING: Can we deal with what he did, if your Honor please?

THE COURT: He says once in a while he put them on.

MR. FLEMING: Yes.

Q And at the times the once in a while when you put them on the tables, where were they placed?

A They were -- they would be placed on the table and we wouldput sugar bowls on it or napkins, you know, to conceal them.

Q What was the reason for that?

A Well, just -- we just didn't want the customer to read it, I guess, because it was like -- it was negative and they wouldn't know what they were reading, anyway.

Q Do you receive any instructions --

MR. FLEMING: Can I have that last answer read back, please.

THE COURT: Read it back.

MR. FLEMING: The question and answer, if I could.

(Record read)

Q At the times you put the reports on the table, as you testified, that they were covered up, was that done pursuant to instructions?

A Yes.

Q Who gave you those instructions?

A The team manager.

Q Was there any --

MR. FLEMING: I object.

THE COURT: He said team manager.

The objection is overruled.

Q Mr. Masone, speak up so Mr. Fleming can hear your answers. He is having difficulty.

MR. FLEMING: I heard that answer. I objected to it. I thought it was not responsive.

Q Do you recall any specific team manager who gave you those specific instructions?

A What, to put them on the table?

Q You testifed if they were put on the table they were covered up and that you were instructed to do that.

Now my question is, who instructed you to do that, specific individuals, if you recall?

A I really don't remember.

Q At the time when the property reports were put on the table, was it a standard practice to have them covered up?

MR. ARKIN: Objection. Asked and answered.

THE COURT: Sustained.

He can only testify as to what he did.

A Yes.

THE COURT: Strike the answer.

Team managers can tell you what happened in the whole thing because that was the sphere of their operation.

A salesman who sat at a table can only say what he did.

MS. HYNES: Your Honor, may I explore whether he observed other salesmen?

THE COURT: No.

(Pause)

Q Mr. Masone, I show you Government Exhibit 256 in evidence, and ask you if you can identify that (handing).

A Yes. It is a confidential survey sheet.

Q Was that confidential survey sheet used by you at dinners that you attended?

A Yes. We had to put these on the table.

Q Did you receive instructions from anyone about putting these confidential surveys on the table?

A Well, they were mandatory. The team manager wanted you to put them on the table.

Q What was done with the confidential survey?

A Well, it would be given to a customer for the customer to fill out.

THE COURT: We will have a short recess.

(Recess)

end t

(In open court - jury present)

THE COURT: You may proceed.

BY MS. HYNES:

Q Mr. Masone, I am going to show you Government Exhibit 793 for identification and ask you if you can identify that.

A It's an offering statement.

Q I will show you Government Exhibit 798 for identification. Can you identify that?

A A property report.

MS. HYNES: I offer 798 and 793.

MR. ARKIN: Fine, no objection.

(Government Exhibits 793 and 798 received in evidence)

Q Mr. Masone, I show you Government Exhibit 798 in evidence. It is a property report, it says effective date of property report, October 16, 1972. On the back cover it says, receipt of Rio Rancho Estates property report -- your Honor, can I just read a little more from this receipt?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 798 in evidence to the jury)

Q On Government Exhibit 793, an offering statement, dated June 20, 1973. On the back of this offering statement is a receipt.

(Ms. Hynes read from Government's Exhibit 793 in evidence to the jury)

Q The two receipts on these offering statements and the property report are tear-off receipts, is that correct?

A Yes.

Q Did there come a time when you had to get the customer to sign a receipt for the offering statement and the property report?

A Yes.

Q Did the practice at the sales dinners that you attended change at the time when you had to have a tear-off receipt signed by the customer?

A Yes.

MR. ARKIN: Objection.

THE COURT: Sustained. What was the first practice? Changed from what? Let him tell us what the practice was before.

Q What was the practice with respect to property reports and offering statements prior to the time when you had to have tear-off receipts?

MR. FLEMING: Objection, your Honor.

THE COURT: First, I do not know when they had to have tear-off receipts.

MS. HYNES: I gave the dates of the report.

THE COURT: That doesn't mean that was the first time they needed them.

MS. HYNES: Your Honor, the prior report that I offered into evidence and is in evidence on the offering statement is October 1, 1972. It does not have the tear-off receipt.

THE COURT: Right.

MS. HYNES: The next dated offering statement is June 20, 1973. That does have a tear-off receipt.

Let me ask the witness.

Q Mr. Masone, do you recall approximately when a tear-off receipt was required for a New York State offering statement?

A Well, it was when these new ones came out where the customer had to get the receipt.

Q Do you recall approximately when that was?

A You mean what particular time period?

Q Yes.

A I think that came in effect when the HUD regulations were changed.

Q Do you recall whether Government Exhibit 793, which is an offering statement, dated June 20, 1973, replaced the offering statement, dated October 1, 1972, which has been marked 792?

A Yes, it did because you had to sign for it at that time.

MR. ARKIN: Move to strike the answer as non-responsive.

THE COURT: That is true.

Do you know when the State of New York required the purchaser to sign a tear-off receipt from an offering statement?

THE WITNESS: What date, your Honor?

THE COURT: Yes.

THE WITNESS: No, I don't.

THE COURT: He doesn't know.

Q At the time that New York State required the tear-off receipt, was there a change in practice with respect to that offering statement?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MS. HYNES: Your Honor, at least as of June 20, 1973 --

THE COURT: Get a measuring rod of change. Your first question is what was the practice before the change came in. That is the proper question.

MR. ARKIN: Also, if your Honor please, no foundation for the question that that was required by New York State or any other agency.

THE COURT: Let's get what she is trying to get at. When you have a proper objection I will entertain it.

MR. FLEMING: Your Honor, could I --

THE COURT: Do you want another objection? Go ahead.

MR. FLEMING: I had understood his testimony to be his practice.

THE COURT: When?

MR. FLEMING: My objection is to the language "practice". My understanding of his testimony has been as to his practice. I have no objection to testify as to his practice, but I see no foundation for practice.

THE COURT: This witness says he was told never to put the reports on the table.

Go ahead.

Q What was your practice with respect to the offering statement prior to the time when you had to sign this tear-off receipt?

A You mean before -- in other words, before the customer had to sign for it?

THE COURT: Yes.

A Like I said before, we never put them on the table.

THE COURT: So he never put them on the table so he never got a receipt, is that what you are trying to say?

THE WITNESS: Yes.

THE COURT: All right.

Q When a receipt was required, when that tear-off receipt was required to be signed, what was your practice at that time?

A At that time I started putting them on the table because we were told to put them on the table.

Q At the time that there was a tear-off receipt on the HUD property report -- withdrawn.

What was your practice with respect to the HUD property report being placed on the table prior to the time when there was a tear-off receipt required to be signed?

A What was the practice?

Q What was your practice?

A My practice. Well, we just didn't put it on the table.

Q At the time when the tear-off receipt was required to be signed, what was your practice with respect to the HUD property report?

A We put it on the table.

Q I show you what has been marked in evidence as Government's Exhibit 141-A, which is a reservation and purchase agreement for Rio Rancho Estates. This particular one is dated February 1, 1972. There is a paragraph which states:

"I/we acknowledge receipt of copies of restrictive covenants, property report filed with the Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development and any applicable property report, offering statement or prospectus required by state authorities."

There is a place for the buyer's initials.

What was your practice with respect -- withdrawn.

Prior to having the customer actually sign one of these tear-off receipts from the property reports, did the customer have to sign or initial the contract that they received the property report?

A Yes.

Q What was your practice with respect to obtaining their initials on the contract for the receipt of the property report?

A I used to tell them to initial it because we needed their initials.

Q At the time that you were asking them to put their initials on the contract, had you given an offering statement or property report to them?

A No.

Q After they signed the contract, was an offering statement or property report given to them?

A Sometimes it was, if it was in the kit, and sometimes it wasn't.

Q You mentioned if it was in a kit.

A Yes, we used to make up kits.

Q Were the offering statements and property reports generally in the kit that was given to the customer after they signed the contract?

A Sometimes.

Q After the customer had to sign the tear-off receipt for a property report or an offering statement, was the customer actually given the property report and offering statement?

A Yes.

Q Was that before or after they signed the contract?

A They were given it after.

Q After a speaker gave a presentation and holds were called on property, could more than one hold be called on a particular piece of property?

A Yes.

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. FLEMING: Is this his practice? That is my problem, your Honor.

THE COURT: He was there. He could hear other people yell "Hold". That is a little different.

MR. FLEMING: He is talking about generally.

Q What was the purpose of calling a second or third hold on the property, if you know?

A On one single piece of property what was the purpose of it?

Q Yes.

A I guess more or less to create the urgency of that particular piece of property.

Q If a sales person called a hold and a second person called a second hold on the property, could the sales person who called the second hold, could they sell the property without checking with the person who put the first hold on?

A No, they would check with the manager.

Q What would they do?

A They would check with the manager. If they had a commitment they were brought to the manager and would say I am taking this particular piece of property.

Q Was that whether or not they had the first, second or third hold?

A Yes, it didn't matter. It is whoever sold it first.

Q At the dinners that you attended were there closing tables?

A Yes.

Q People were taken to the closing table?

A Yes.

Q Were they seated at the closing table?

A Yes, with their backs towards the door, towards the exit door.

Q What was the reason for that?

A Well, they wanted us to do it that way for the simple reason, if you had a prospective client, you wouldn't want them to see someone else that is not interested that was leaving the room.

Q You said they, did you receive instructions on this seating arrangement?

A Yes, that was a rule.

Q Who gave you those instructions?

A The team manager.

Q Did you attend the sales meetings from time to time?

A Yes.

Q Who conducted those sales meetings?

A Len Geller.

Q Were you trained at these sales meetings how to overcome objections?

A Yes.

Q What were some of the common objections that you were trained to overcome?

A Well, the main one was, I want to think about it.

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Q How were you trained to overcome that objection?

A Well, there is basically really nothing to think about. If you like it and you can afford it, we will give you six months to think about it.

Q What were you referring to in the six months?

A We were referring to the six month refund guarantee that we used to have.

Q What was another common objection?

A I want to show it to my attorney. I don't do anything without my attorney.

Q How were you trained to overcome that objection?

A We were trained primarily to say, well, if there's anything that you don't understand about the contract, I would be more than happy to sit down with you and go through each and every paragraph and explain it to you.

Q What were some other common objections?

A Can't afford it.

Q Were you trained -- how were you trained to overcome that objection?

A You can't help not to afford it because this is something that's going to build up equity for you.

Q Build up?

A Build up equity for you.

Q Was anything else said?

A Primarily that was it.

Q Are you familiar with the term financial leverage?

A Yes.

Q What is it?

A Well, when one investment can offset another.

MR. FLEMING: Can I have that answer?

(Record read.)

Q What do you mean one investment can offset another?

A Well, I mean the way I would think it would be, where one investment is a lot better, you know, than the others.

Q What did you tell the customer with respect to financial leverage, if anything?

A That real estate was a very good investment.

Q Did you make any specific statements about why Rio Rancho was a good investment?

A Yes, because it was growing.

Q Did you refer to price lists at dinners with customers?

A Sometimes.

Q At the times that you did refer to price lists, what did you say?

A We showed them where our property had increased from one time period to another.

MR. FLEMING: May we have what he did, if your Honor please. He keeps saying "we."

THE COURT: What he did.

Q What did you do, Mr. Masone?

A I showed them one price list where maybe a piece of property was listed for 2,000 and if we had a new price list, I would show them the difference where it had gone from 2,000 to 2500.

Q At the sales dinners that you attended, the weeknight dinners, when, for the first time, was the customer given a sales contract?

A When was he given a sales contract at the dinners?

Q Yes.

A When the presentation -- when the manager would say, our consultants are now going to hand you our reservation and purchase agreement to read and that's when he would read back the six month refund guarantee.

Q At that time you directed the sales contract to the customer?

A Right.

Q Then what happened?

A Then the speaker would read off the six month refund guarantee.

Q After he read off the six month refund guarantee what happened?

A Then he would go into a normal -- I think that was at the close of the presentation, of the speaker's presentation.

Q After that would the hold be called?

A Right.

Q You would take the customer to the closing table?

A Yes.

Q Did you receive any instructions or training as to what to do with the contract after you called the hold?

A Well, we were trained to assume the sale.

Q What does assume the sale mean?

A Start filling out the contract.

Q You stated that you attended Sunday referral dinners?

A Yes.

Q Were all sales teams required to attend those Sunday referral dinners?

A Most of them, yes.

Q Was there a speaker at those dinners?

A Yes.

Q Who were the speakers at those dinners?

A Well, it was primarily Peter Miller, Len Geller or Danny Monaco or whoever was the tour director at that time.

Q Was any statement made by Mr. Miller at Sunday referral dinners about a resale office being set up?

A Yes.

Q What did he say?

A He said when we are almost complely sold out, we are approximately about 90 per cent sold out, he says at that time we expect to open up a resale office.

Q Did he give any indication as to how long it would be before all of the property would be sold out?

A He said in the very near future, a year or two.

Q A year or two?

A Yes.

Q At the Sunday referral dinners, did Mr. Geller ever make any statement about the company setting up a resale office?

A Once in a while, I think. I am not sure, though.

MR. FLEMING: I ask to strike it.

THE COURT: Strike it.

Q Mr. Masone, is your testimony --

MR. FLEMING: I object.

THE COURT: I struck the answer, Ms. Hynes. Next question.

Q At the Sunday dinners, these were dinners for property owners and people that they would bring to the dinner, their referral, is that correct?

A Right.

Q A property owner arrived at a dinner and had not attended one of these dinners for a year or so. Was any price list shown to that customer?

A Well, the price list that we had at the present time.

Q What was done with the price list that you had at the present time?

A Well, are you talking about me individually?

Q Was anything said to a customer who owned property about any increase in the value of their property?

A Yes.

Q What was said to them?

A Well, it was said where it depended upon what time they bought their property and we showed them how it increased in value. We were showing the current price list.

Q In January of 1973, you testified that you became a participant in a VIP team, is that correct?

A Yes.

Q What is a VIP team?

A VIP team was a special team set up to bring property owners into the office on an individual basis.

Q What was the reason to bring a property owner into the office?

A Sell him additional property.

Q What office were they invited to?

A The one we were -- ATC.

Q The ATC office?

A Yes.

Q Did you receive any instructions with respect how much property you could sell to any individual person?

A You mean -- well, not really.

Q Were there any instructions?

A There was instructions, you couldn't sell any more than I think it was 14,000 at the very beginning, you know.

Q What happened if a customer purchased $14,000 worth of property?

MR. ARKIN: Objection, your Honor.

MS. HYNES: I will withdraw the question, your

Honor, and I will put another question to the witness.

Q Was there a credit check required for anyone who purchased property?

A Yes, if it was over 14,000.

Q So if you made a sale over $14,000 did you have to get a credit check, is that what it is?

A Yes.

MR. FLEMING: I object to "is that what it is."

THE COURT: Overruled. That's what it was.

Q Mr. Masone, if you got a credit check on a person, were you able to sell them property in excess of 14,000?

A The company really didn't want to sell any more than 14,000 unless they were actually out there and saw the property.

Q But if they had previously gone to the property, were you able to sell them land in addition to $14,000 if you got a credit check?

A Yes.

Q Who was the manager of the VIP team, your VIP team?

A My wife, Charlotte Masone.

Q When did Charlotte Masone become manager of the VIP team?

A I started in January of '73. I think she took it over September or October of the prior year of '72.

MS. HYNES: Your Honor, at the time the government would like to re-offer Exhibit 535.

THE COURT: Yes.

MR. FLEMING: Your Honor, this is the same document that we discussed twice. We object to the reason stated.

THECOURT: For the same reason?

MR. FLEMING: The reason stated yesterday.

THE COURT: Same ruling.

MS. HYNES: Your Honor, can I refer to the transcript of the prior ruling?

THE COURT: Not in front of the jury, Ms. Hynes, you know that's improper.

MS. HYNES: I am asking for a side bar, your Honor.

THE COURT: You did when I pointed it out to you.

(At the side bar.)

THE COURT: Objection was made yesterday that you were calling this woman as a witness.

MS. HYNES: Your Honor, in light of your Honor's statement this morning about accumulation, it may not be necessary --

THECOURT: That won't get you over this admission. Next point.

MS. HYNES: The next point is that Charlotte Masone never received this memo. It relates to her --

THE COURT: If she's being called, and the representation has been made to me at least that she was being called --

MR. FLEMING: We got the Jenks material.

THE COURT: It waits until she takes the stand. It is the same ruling I made yesterday.

MS.HYNES: The prior ruling when we offered it into evidence when we pointed out she was not a recipient of this --

THE COURT: Ms. Hynes, are you calling her as a witness?

MS. HYNES: I don't see any reason to call her.

THE COURT: You had better call her if you want to get that in.

(In open court.)

BY MS. HYNES:

Q Did you ever go on a company tour to Rio Rancho?

A Yes.

Q When did you first go on a company tour, if you recall?

A I don't remember the exact date.

Q You said that you joined ATC in 1971, did you go on a tour in 1971?

A Yes, I might have.

Q Did you go on a tour in 1972?

A Yes.

Q You are sure you went on a tour in 1972?

A Well, I went on quite a few tours.

Q What did you do when you went on the tours?

A I was one of the four guides or tour consultants.

Q What was the responsibilities of a tour consultant?

A The responsibilities of a tour consultant, they were in charge of a specific bus and they were in charge of a certain amount of people.

Q Was there any preparation that you were aware of before the actual tour left New York in terms of obtaining background information on the people who attended the tour or that went on the tour?

A Yes, there used to be a form that the people had to fill out that was sent back to us.

(Continued on next page.)

Q I show you Exhibit 258 for identification, and ask you if you can recognize that (handing).

A Yes.

Q And is this the form that was sent to people who were going to go on a tour?

A Yes.

MS. HYNES: I offer this.

MR. ARKIN: No objection.

XX (Government's Exhibit No. 258 marked for identification received in evidence.)

Q Can you tell the court and the jury what happened when you went on the tour? You got on the plane and when you arrived in Albuquerque, can you just recount for us what happened, to the best you recall?

MR. ARKIN: Your Honor, is that not cumulative?

THE COURT: No. I will let him testify.

We have had customers testify. He was a salesman on the other side.

A What happened?

Q Tell us as best you can recall what happened.

A You mean as soon as we arrived in Albuquerque?

Q Yes.

A Well, depending on how many people we had, we had a certain amount of tour consultants and each consultant was assigned to a specific bus number.

We would put the people cn the bus and take them over either to the Holiday Inn or to the Panorama Inn.

Q When people were assigned to a bus, was there a specific reason for assigning a person to a different bus?

A A specific reason for assigning -- I don't understand what you mean by that.

Q If there were three buses, was there any reason to assign a certain group of people to bus number one or bus number two or bus number three that you were aware of?

A Yes.

The people with the largest holdings were put in bus number one; the people with the most amount of property.

Q And after the people got on thebus, where were they taken?

A Either to the Holiday Inn or to the Panorama Inn.

Q Where was the Holiday Inn?

A In Albuquerque.

Q And where was the Panorama Inn?

A On Rio Rancho Estates.

Q Of the tours that you attended, do you recall what percentage of those tours you stayed at the Holiday

Inn and what percentage at the Panorama Inn?

A I would say 80 per cent of the times we stayed at the Holiday Inn.

Q Was there any reason for staying at the Holiday Inn?

A The accommodations were better.

Q Was there any other reason for having the people on the tour at the Holiday Inn as opposed to the Panorama Inn?

A Well, we didn't want the people on property.

Q Why didn't they want the people on property?

A I don't know. Because we wanted to control them better, I guess. If we were at the Holiday Inn, you know, we would have more control over them.

THE COURT: When you say you guess, did somebody tell you this or is this what you think?

THE WITNESS: Yes.

THE COURT: Yes, what?

THE WITNESS: Yes, they told us.

THE COURT: Who told you?

THE WITNESS: Whoever was the tour director and ran the tours.

Q Who were the various tour directors?

A Danny Monaco and Norman Fried.

Q You mentioned controlling people on the tour. Can you explain that, please?

A Basically, to keep the people intact and making sure that you know exactly where they are and what they are thinking and so on.

Q How did you do that?

A How did we do what?

Q How did you keep track of people and how did you know where they were all the time?

A Number one, we tried to keep them in groups.

If I was in charge of bus number one, I would be responsible for my particular group of people and I would always have to know where they were at every specific time, and then I would have to report back.

Q Who did you report back to?

A To whoever was running the tour at that time.

Q Did you have meetings during the course of these tours with other personnel at Rio Rancho?

A Yes, yes.

Q And how frequently did these meetings occur?

A Every day.

Q And were they more than once a day?

A Sometimes in the afternoon and then at night.

Q And what was the purpose of these meetings?

A The purpose of the meetings was to find out how everything was going and how the people were felling and who were the negative ones and who were the positive ones.

Q Who attended the meetings?

A All the -- whoever was involved in the tour. The tour guides plus the tour consultants plus the tour director and Len Geller or Peter Miller when he was alive.

Q People were transported from place to place in buses, is that correct?

A Yes.

Q The tours that went down to the property from New York, how long were they?

A The ones that I remember started out I think it was four days or five days and four nights or four days and three nights. I'm not sure.

Q There was a schedule for what the activities would be on those tours?

A Yes. There was an itinerary, yes.

Q Was there a particular time or day set aside for the people to see the property?

A Yes.

Q And you said that this was a five day tour.

Do you know which day was set aside for the people to see the property?

A It was always the day before we left.

Q Was there any reason to have it the day before you left, that you were aware of?

A No. That's just the way it was set up.

I guess it was -- it was the way it was set up.

Q Okay.

What happened when people were taken to the property?

MR. FLEMING: Is this personal knowledge, if your Honor please?

I assume this is calling for when he went.

THE COURT: When you say taken to the property, do you mean the customers' property or the entrance gate to Rio Rancho?

MS. HYNES: I will clarify that,your Honor.

Q Mr. Masone, if, for example, people were staying at the Holiday Inn in Albuquerque, they were transported to the property in a bus, is that correct?

A Yes.

Q And then when they got to the property, did you accompany them to the property in that bus?

A Yes.

Q And what happened after theyt off the bus when

when they arrived at the property?

A They were put into a certain room of the sales office on property and they were given a presentation.

Q Did you attend those presentations?

A Sometimes I stood in the room, sometimes I waited outside.

Q For the times you did attend the presentations, do you recall what was said?

A Well, yes.

They explained how Rio Rancho was nothing at one time and how it was growing and expanding and they would emphasize on the fact that there was no shopping area, how we have a shopping center and the growth of Rio Rancho itself.

Q Was anything said about the growth of Albuquerque?

A Yes.

Q Was anything said about the direction of the growth of Albuquerque?

A Yes.

Q What was said about the direction of the growth of Albuquerque?

A That it was primarily hemmed in on three sides.

Q Was anything said about the effect of that growth of Albuquerque on Rio Rancho?

A Excuse me?

Q Was anything said about the ffect of the growth of Albuquerque on Rio Rancho?

A Yes. Well, that will effect Rio Rancho as far as land values were concerned.

Q What was the purpose of the tour, the company tour?

A To bring people down who had bought back here in New York and let them -- well, you know, solidifying -- either solidify or cancel their property.

Q What is the term solidify?

A It means when a person goes down and sees a property they decide to keep it, they sign a form and they kept it. That's what we call a solidify.

Q Were people sold additional property on the tour?

A Yes.

Q You mentioned before that people were controlled and that there was a schedule.

Were there occasions when you were on the tour when a customer would make an inquiry about renting a car?

A A few times.

Q And what happened -- would a customer make an inquiry to you personally about renting a car? Did that ever happen?

A It happened once to me.

Q And what -- did you receive any instructions as to what to do if a customer made that request to you?

A Yeah. We had to --

Q Let me -- did you receive instructions?

A Yes.

Q Who gave you those instructions?

A Whoever was running the tour at that time.

Q Well, do you have a specific recollection of instructions being given to you with respect to that type of request?

A Yes; that if anyone wanted to rent a car, that we were told to try to discourage it, to try to --

Q Who told you that?

A Danny Monaco, Peter Miller or Len Geller.

Q Was there an occasion when you had a conversation with Mr. Leonard Geller concerning someone who had rented a car?

A Yes.

Q And what was that conversation?

A I told him that a certain customer, I forgot who the customer was, you know, turned around and rented a car, and he got very disturbed about it.

Q What did he say to you?

A He said, "Well, why did you let him do it?"

I said, "What do you want me to do, hit him over the head? I couldn't stop him."

Q Did he give you any instructions as to how to handle that situation?

A He says, "You know, from now on if anyone wants to rent a car, you send him over to me."

Q And did you do that?

MR. FLEMING: He has testified he was only asked once, if your Honor please.

THE COURT: That's right, that's what he said.

Q Was there an occasion, Mr. Masone, when -- you said there was one occasion when someone asked you to rent a car?

A Yes.

Q Whatspecifically did you do?

A I went to the desk clerk and I told him if a certain party wants to come and rent a car, tell him there are no cars available.

Q What was the reason for discouraging people from renting cars?

MR. FLEMING: His reason?

THE COURT: If you were told why.

THE WITNESS: What was the reason for it?

THE COURT: Did anybody, this fellow Len Geller, did he tell you why to send anybody to him?

THE WITNESS: Yes.

THE COURT: Did he tell you why they wanted to discourage renting cars?

THE WITNESS: Yes. They didn't want people wandering around downtown Albuquerque or going out on their own.

Q Did he explain why he didn't want them going out on their own?

A Not really. He just didn't want --

THE COURT: Hold it.

Q Okay.

He either did or he didn't. Did he?

A No, he didn't.

Q If someone was staying at the Panorama Inn on the property and made a request to go into Albuquerque, what was done?

A Number one, we would find out why he wanted to go, and if he insisted on going, then we would have one of the tour guides drive him there.

Q And would the tour guide remain with that person while they were in Albuquerque?

A Yes. As far as I know they would.

Q You mentioned that there were daily meetings twice a day on these tours.

At any of themeetings that you attended, did Mr. Geller give any instructions with respect to the local Albuquerque paper?

A In reference to what? I don't know what you mean.

Q Was there a situation that you were aware of where there was an article in the Albuquerque paper that was adverse to Rio Rancho?

A Yes.

(Continued on next page.)

Q And did Mr. Leonard Geller give any instructions with respect to what should be done with those papers?

A Yes. He told the tour guides to go out and buy all the papers out or take them out of the Panorama Inn.

Which is it?

THE WITNESS: Well, I don't remember, your Honor, you know, the exact -- the phrases that he used. Either to buy them or take them out of the Panorama Inn.

Q What is the Panorama Inn?

A That is the motel that was on Rio Rancho property.

Q Is that owned by the company?

A Yes.

Q Was the tour that you were on that time staying at the Panorama Inn?

A Yes.

Q What, if anything, happened when a person, a customer wanted to cancel his property when he was on this tour, if you know of your own personal knowledge?

A Try to talk him out of it.

Q How was that done?

A Well, it was done in the sense we would pressure him and then -- I really can't explain that, really, because we would pressure him in trying to keep it.

Q Were they taken to an office?

A They were primarily in the land salesman's office.

Q And were they turned over to anyone else?

A Yeah. They were turned over to either Len Geller, Peter Miller or Danny Monaco.

Q Did you have a conversation with Mr. Geller concerning what he said to people when they wanted to cancel?

A Well, I only remember one occasion where he gave a person an option to go back home to New York and in two or three days to stop up, you know, into the office and discuss it.

Q Was this a person that you had made an inquiry about concerning whether he had cancelled?

A He wanted to cancel.

Q Was he able to cancel the property at that time?

A At the time when he was on property or back home in New York?

Q The time when he was on the property.

A Well, he could have cancelled, but he gave him the option, you know, to come back to the office in New York.

Q Who gave him that option?

A Len Geller.

Q How were you compensated when you were on these tours?

A We received a certain percentage override.

Q And the override was on what?

A On whatever additional sales were made.

Q Are you familiar with the term "upgrade"?

A Yes.

Q What is an upgrade?

A An upgrade is someone buying additional property.

Q I am going to show you Government Exhibit 767 for identification and ask you to look at this and if you recognize this (handing).

A Yes. This was a tour breakdown.

Q A tour breakdown?

A Yes.

Q Does your name appear on this tour breakdown?

A Yes.

Q And to the best of your recollection, did you attend an ATC tour from August 9th through August 13th of 1972?

A Yeah. Well, if my name was on there, I had to attend it. I had to be on that tour.

MS. HYNES: I offer 767.

MR. ARKIN: May we have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

XX

BY MR. ARKIN:

Q Mr. Masone, showing you page 2 of Exhibit 767, are you able to identify the handwriting on the right-hand side of the page?

A Are you talking about this here (indicating)?

Q Yes.

A The handwriting?

Q Yes.

A To identify it?

Q Yes.

A It looks like -- no.

Q You can't identify it?

A No.

Q And what about the handwriting at the top of the page?

A That looks like Peter Miller's.

Q That looks like Peter Miller's?

A Yes.

Q Let me take the next page over here now.

Are you able to identify the list -- strike that.

Are you able to identify the handwriting which appears at the far right-hand corner of that page?

A No. It looks the same as this, doesn't it?

Q Well --

A No, no.

Q You can't?

A No.

Q What about the handwriting which appears on the fourth page of that same exhibit at the bottom of that page?

A This here (indicating)?

Q Yes, sir.

A No, I can't identify it.

MR. ARKIN: Do you have a clean copy, Ms. Hynes?.

MS. HYNES: What do you mean a clean copy?

MR. ARKIN: Your Honor, based on --

THE COURT: I gather there is quite a bit of handwriting on there which this witness can't identify?

MR. ARKIN: Yes.

MS. HYNES: Do you want to take a look at this?

THE COURT: Take it out.

MS. HYNES: Your Honor, I would have no objection to offering the first page, the cover page, which is the August 15, 1972 memo.

THE COURT: Show it to Mr. Arkin.

MR. ARKIN: If your Honor please, I don't know, but if there is in existence an exhibit, an entire exhibit without the handwriting, we have no objection.

THE COURT: Now Ms. Hynes says she only wants to offer page 1.

MR. ARKIN: I object to page 1, because it is incomplete.

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: I don't think you are prejudiced by not having the table attached to it, Mr. Arkin.

MR. ARKIN: Excuse me, your HOnor. It might very well be that Ms. Hynes might have a witness whose handwriting that is. I myself cannot identify the handwriting. Perhaps Ms. Hynes can.

If that is the case, that will not be a problem at all.

MS. HYNES: Your Honor, I am not in a position at thie time to identify the handwriting.

THE COURT: I will let the first page in.

MR. ARKIN: If your Honor please, if that is your Honor's ruling, in that event, I would prefer the jury have the complete and entire exhibit and I will withdraw my objection.

THE COURT: All right.

(Government Exhibit 767 received in evidence)

MS. HYNES: The government will offer 768 in evidence.

MR. ARKIN: No objection.

(Government Exhibit 768 received in evidence)

MS. HYNES: Your Honor, I just have a very few questions of this witness.

THE COURT: All right.

BY MS. HYNES:

Q Mr. Masone, were the tours that you went on successful in upgrading customers and selling them additional property?

A Yes, most of them were.

MS. HYNES: Your Honor, may I read from Government's Exhibit 767?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 767 in evidence to the jury)

MS.HYNES: May I read from Exhibit 768, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 768 in evidence to the jury)

Q Mr. Masone, the memo that I read talked about encountering problems with radio, television and newspapers, pickets and demonstrations.

Do you recall what that particular situation was?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Mr. Masone, did there come a time when you participated in what was called a fly and buy tour?

A Yes.

Q What is a fly and buy tour?

A A fly and buy tour where the teams, various teams had dinner parties, but not to sell land, to sell a tour.

Q And when were these fly and buy tours in operation?

A When?

Q When?

A It might have been '74.

Q 1974.

And how long did that program continue, if you know?

A To my knowledge, maybe about six months.

Q Was it successful?

A No, not at all.

Q Was it discontinued, do you know?

A I think it was, yes.

Q And the fly and buy tour, you said, was still a dinner party presentation?

A Yes. It was at a dinner party, but instead of selling people a piece of property then, then we would sell them the tour.

Q So you did not sell property at that dinner party, you sold people thetour to go down to Rio Rancho?

A Right.

Q Did these people have to pay for that tour?

A Yes.

Q And what was the purpose of taking the tour to Rio Rancho?

A Well, the purpose was to take them on a tour and sell them the property down there at Rio Rancho Estates itself.

Q When did you leave ATC Realty?

A August 1975.

MS. HYNES: I have no further questions.

THE COURT: We will adjourn now for lunch. It is two minutes to one, Mr. Fleming.

MR. ARISOHN: Your Honor, might I hand out the scripts?

THE COURT: Wait until the jury comes back. I don't want them to take it out to lunch.

MR. ARISOHN: Very well, your Honor.

THE COURT: In fact, the jury should be given those at the afternoon recess. I thought they would have been given out this morning.

MR. ARISOHN: I forgot.

THE COURT: We will have lunch now and return at 2:15.

(Jury left the courtroom)

MR. HOFFINGER: Mr. Blum has indicated he was wondering if he can leave at 3:30 this afternoon, your Honor.

THE COURT: You wish to leave this afternoon at 3:30, Mr. Blum?

DEFENDANT BLUM: Yes, your Honor.

THE COURT: Be back Monday morning at 10:00 o'clock.

DEFENDANT BLUM: Monday morning.

THE COURT: All right. Your attorney will be here representing you.

DEFENDANT BLUM: Yes, your Honor.

THE COURT: All right.

(Luncheon recess)

T1A pm

EOjw 1

AFTERNOON SESSION

2:25 P.M.

(In open court - jury present)

NICHOLAS THOMAS MASONE, resumed.

THE COURT: You may proceed.

CROSS EXAMINATION

XXX

BY MR. FLEMING:

Q Mr. Masone, how many times did you go down to Rio Rancho on a tour?

A The exact number I don't remember, but it was quite often.

Q Quite often?

A Yes.

Q As often as once every two or three weeks?

A No.

Q Did your wife go down as often as once every two or three weeks?

A No. At certain time periods we did, maybe once every two or three weeks.

Q When did you first go to work precisely for ATC?

A I believe it was April of '71.

Q April 1971?

A Yes.

Q You were shown -- you had a very successful tour in terms of property sales August 9th through 13th of 1972; is that right?

A I believe so.

Q You were shown these documents 767, which is a memorandum from Mr. Miller to Mr. Carity reporting on that tour.

A I was shown this document by whom?

Q Ms. Hynes.

A Yes.

Q You were shown 769 which is a letter from Mr. Howard Friedman to Mr. Peter Miller congratulating him on the results of the same tour?

A Yes.

Q Now, did you discuss with -- did you speak to any of the prosecutors before you testified here?

A Yes.

Q Often?

A Maybe about three or four times.

Q Did you discuss all of your tour experiences with them?

A Yes.

Q You told them which ones were successful and which ones were not?

A As I remembered, you know, I discussed with them.

Q In any event, you discussed this August 1972 tour which was very successful?

A Yes.

Q Did you discuss with them the fact that on January 1, 1972 through April 3, 1972, that would be the first three months of 1972, that sixteen percent on a dollar basis of the homesite owners visiting Rio Rancho cancelled?

Did you discuss that with them?

A I discussed the approximate cancellation, but I don't remember saying like sixteen percent.

Q 16.8 percent about an approximate cancellation rate?

A I never said 16.8 percent.

Q Did you discuss with them that during the same three month period of time the increase in sales, dollar amount, resulting from the trip was 21.4 percent?

MS. HYNES: Your Honor, I object unless there is a foundation. If Mr. Fleming has a foundation that this witness was on the tours and has knowledge of this, I have no objection to this line of questioning, but there is no foundation for it.

THE COURT: This is cross examination. He is being asked whether he knows those facts as Mr. Fleming alleges. They are not proof for the jury.

THE WITNESS: Do you want to repeat that again, please.

Q The first three months of 1972, the results of refunds tours, dollar amount, 16.8 percent cancellation, 21.4 percent increase.

A I wouldn't know that.

Q You went on tours?

A Yes, but we didn't get the exact breakdown as far as percentages were concerned. I don't even know if I was on those tours in that three months period.

Q During the time you went down there on tours, what to your recollection was the percentage of cancellation on dollar volume?

A It wasn't that much.

Q What was the percentage of increase on dollar volume?

A I would say 50 percent, 60 percent.

Q 50 or 60 percent?

A Well, that is an approximation.

Q That is an approximation.

MR. FLEMING: May I have this marked, please.

xxx (Defendant Chester Carity and Daniel Friedman Exhibit BH marked for identification)

Q Let me show you BH for identification, the third page, paragraph 10, and let me ask you to refresh your recollection as to the rates for the first three months in 1972.

A As to the what, sir?

Q As to the rates of cancellation on trips and increase on trips in the first three months of '72.

A That is paragraph 10, am I correct?

Q Right.

A Cancellation percent is --

Q I am asking you if it refreshes your recollection.

A No, I never saw these charts before.

Q I am asking you if it refreshes your recollection.

A No, it doesn't.

Q I take it you were equipped with walkie-talkies on these tours?

A No.

Q The Holiday Inn was in downtown Albuquerque, is that right?

Q You didn't want people to see downtown Albuquerque themselves, is that correct?

A It wasn't me, it was the company. I wasn't in charge. Whoever was in charge of it.

Q Whoever gave you orders did not want homesite owners to see downtown Albuquerque alone, is that right?

A Right.

Q And the Holiday Inn where you say they stayed was in downtown Albuquerque?

A That is where I think it was, yes.

Q Whoever you were taking orders from did not want the property owners -- the homesite owners to see Rio Rancho alone, is that right?

A Yes, I would say so.

Q And the Panorama Inn was located at Rio Rancho?

A Yes.

Q So it is fair to say that you had a problem whether you were in the Holiday Inn or Panorama Inn?

A We did whatever they told us to do.

Q Did Mr. Monaco get up very early in the morning and read the newspapers when he was down there?

A I don't know, I didn't go to bed with him.

I wouldn't know what he did.

Q That is good news.

In any event, you had this incident where he told you to go out and either buy all the Albuquerque newspapers or take away all the Albuquerque newspapers and that just happened to be at the Panorama Inn?

A It only happened as I testified before on that one occasion as far as I remember.

Q That happened to be at the Panorama Inn?

A I believe it's where it took place, yes.

Q Although to your recollection most of the tours went to the Holiday Inn?

A Yes.

Q In downtown Albuquerque?

A Yes.

Q To keep them away from the property, was that your testimony?

A Excuse me.

Q To keep people away from the property?

A Well, I guess that is what the reason was for.

Q Didn't you so testify under oath this morning that that was the reason?

A Yes, I imagine that was the reason.

Q Did you so testify on your oath this morning that that was the reason?

A Yes.

Q Were you just imagining it?

A I testified that it was because I assumed that is what they wanted. That is why they wanted to keep the people in Albuquerque.

Q Was that your imagination, your assumption or your knowledge?

A I would say my knowledge.

Q Which would you say?

A My knowledge.

Q On your oath?

A On my own?

Q On your oath?

A Yes.

Q Isn't it a fact that the tours were to be taken to the Panorama Inn unless Panorama Inn was so crowded that it could not accommodate the tour?

A That was another reason.

MR. FLEMING: Could I have my question read again, please?

(Record read)

A Yes, on occasions. I didn't run the tour so

I really don't know what the reason was for putting people in the Holiday Inn or the Panorama Inn.

MR. FLEMING: If your Honor please, if he doesn't know the reason, I would like to strike his testimony this morning.

THE COURT: I will have to strike his testimony.

You testified that you were told that was the reason. Now you say you don't know, you are making it up.

I will strike all the testimony regarding taking people on tour to Holiday Inn.

Q By the way, when you went out to get all the newspapers that morning, whether you were going to buy them or just take themaway at the Panorama Inn, do you remember the Budget-Rent-A-Car stand right in the lobby of Panorama Inn?

A Yes, sir, I never went to get all the papers.

Q You never went. You didn't follow your orders?

A The orders weren't given to me. They were given to one of the tour guides.

MR. FLEMING: I ask to strike that testimony.

THE COURT: He said he gave it to somebody else ojw Masone - cross

Q There is a Budget-Rent-A-Car stand right there in the lobby of the Panorama Inn?

A As far as I remember, yes.

Q There was when you went down there?

A Yes.

Q The company, as a matter of fact, had a contract with Budget-Rent-A-Car, an agreement with Budget-Rent-A-Car where tour homesite owners could get a discount on renting a car, isn't that true?

A I guess so. I don't know if they had an agreement with Budget-Rent-A-Car or not.

Q Did you go to the person representing Budget-Rent-A-Car and in the business of renting Budget-Rent-A Cars and tell them, don't rent any cars?

A No.

Q Did you go to those people and did you tell the, look, if anyone of these people, homesite owners, come in and ask you to rent a car, you tell them you are out of cars?

A If I told them that on one occasion.

Q You told the Budget-Rent-A-Car system that?

A It was the clerk at the desk.

Q I said did you tell the Budget-Rent-A-Car?

A I don't know who ran the Budget-Rent-A-Car.

There was a clerk at the desk and the sign was there.

Q Did you tell anyone from Budget-Rent-A-Car, which had a booth in Panorama Inn, that if anyone that I am controlling comes to you and asks you to rent a car, you are to tell them that you are out of cars?

A I don't know if it was a clerk from the Budget-Rent-A-Car or not. I told the clerk at the desk.

Q At the desk for Panorama Inn, is that right?

A I guess so, I don't know.

THE COURT: When you say clerk at the desk. you mean the clerk at the desk where you registered to get a room at Panorama Inn.

THE WITNESS: Right.

THE COURT: What?

THE WITNESS: Yes.

THE COURT: Okay.

Q Now, did you testify this morning that you were instructed to keep track of your group?

A Yes, sir.

Q How many people were in your group?

A It was approximately anywhere from 30, 40 people.

Q When they had leisure time between 4:00 and ojw

7:00 o'clock, did you make sure they were in their rooms?

A Well, you couldn't make sure because that was the time that they could do anything they wanted.

Q Did you set up a surveillance to see where they were going?

A No.

Q Did you tuck them in at night?

A No, again like I said, no.

Q Did you testify this morning that you were supposed to contact the tour directors to tell the tour directors exactly what your group was doing?

A Yes, we had various meetings.

Q If you saw someone in your tour walking around the streets of Albuquerque, did you run to a phone and call your tour director and tell them that someone was walking around the streets of Albuquerque?

A They didn't walk around the streets of Albuquerque because we used to keep them under control and keep them in a group.

Q Did you have a rope?

A No, we just --

Q The answer is no.

A It is a very hard thing for me to say. We used to tell them to be at a certain place at a certain time and we were always as a group together.

THE COURT: Pardon me. When you say you had them in control, you mean in the times when they were supposed to be together as a group?

THE WITNESS: Yes.

THE COURT: But in the times where they had time off to do as they pleased, they could go anyplace they wanted?

THE WITNESS: Yes.

THE COURT: So if they were in the Holiday Inn in downtown Albuquerque between 3:00 and 7:00 o'clock at night, they could go out and walk around the town and you wouldn't know about it?

THE WITNESS: No.

THE COURT: You would make no attempt to stop them from doing it?

THE WITNESS: Well, I wouldn't know it.

Q So the "control" you are talking about is when the homesite owners were on the bus?

A On the bus and when we were like say downtown and visiting the coliseum or whatever.

Q On the bus and off the bus walking around?

A Right.

Q By the way, you testified that when the homesite owners came down to Albuquerque there was a meeting up at the property, up at Rio Rancho, where they were addressed, where there was a little speech given to them, is that right?

A You are talking on the day they went to see their property?

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used to tell them to be at a certain place at a certain time and we were always as a group together.

THE COURT: Pardon me. When you say you had them in control, you mean in the times when they were supposed to be together as a group?

THE WITNESS: Yes.

THE COURT: But in the times where they had time off to do as they pleased, they could go anyplace they wanted?

THE WITNESS: Yes.

THE COURT: So if they were in the Holiday Inn in downtown Albuquerque between 3:00 and 7:00 o'clock at night, they could go out and walk around the town and you wouldn't know about it?

THE WITNESS: No.

THE COURT: You would make no attempt to stop them from doing it?

THE WITNESS: Well, I wouldn't know it.

Q So the "control" you are talking about is when the homesite owners were on the bus?

A On the bus and when we were like say downtown and visiting the coliseum or whatever.

Q On the bus and off the bus walking around?

A Right.

Q The difference was they were in Albuquerque when they were told it, weren't they?

A Yes.

Q They didn't have blindfolds on, did they?

A No.

Q They were able to stand in Rio Rancho out at their property and look and see where Albuquerque was?

A I guess so.

Q You have been out on the property, haven't you?

A Yes.

Q You can see Albuquerque from the property, can't you?

A Yes.

Q You can see the road that runs from Albuquerque across the bridge and up to Rio Rancho, can't you?

A Yes.

Q Now the home site owners didn't look at the ground all the time, did they?

A I don't know what they did.

Q I thought you had them under control.

A Well, I can't see where they were looking.

Q You couldn't.

They saw the developed area, did they not?

A Yes.

Q They saw the undeveloped area, did they not?

A Yes.

Q They saw the Siandia Mountains?

A Yes.

Q By the way, Rio Rancho was growing, was it not, as a developed community?

A Yes.

Q No question about that?

A I agree with that.

Q Isn't it a fact that most of the tours were housed at Panorama Inn on the property rather than at a Holiday Inn?

A On the tours that I went on, most of them were at the Holiday Inn.

Q So any testimony you are giving about which motel was used, Holiday Inn or Panorama Inn, is limited to your personal experience?

A Yes.

Q You testified this morning that home site owners were shown at these Sunday dinners how the price of their land had increased?

A Well, I showed them that, yes, at the table.

Q You did that, right?

A Yes.

Q Am I correct that any time a home site owner exchanged his property, either for a building lot or for another piece of undeveloped land, he was given full credit for the appreciated value of the property as he had been told?

A Yes.

Q Now, I would like to direct your attention to the sales dinners. You went to work for ATC April, 1971. In what month did you attend your first dinner as a salesman?

A I really don't remember.

Q How long after you went to work, after April of '72?

A It might have been as soon as I gave up being the manager of the home sit program.

Q Would it have been four months later?

A Approximately.

Q You resigned as a home sit person because you weren't making any sales, I take it?

A Right.

Q So that would be April, May, June and July and you became a salesman in July, approximately, of '72, is that fair?

MS. HYNES: '71.

Q I am sorry, '71.

A Yes.

Q You went to sales dinners beginning in or about July of 1971?

A I think so, yes.

Q Did you testify it was your practice, your personal practice ordinarily not to put the property reports on the table?

A We were told not to do it. It wasn't my practice.

Q That's not my question. Did you testify it was your practice individually not to put the property reports on the table?

A Because we were told not to put them on the table.

Q I will simplify it. Did you testify that you did not put the property reports on the table, you personally?

A Yes.

Q Although on occasions you did put them on the table?

A Yes.

Q And you put them under the sugar bowl?

A Yes.

Q Or you put them under the napkins?

A Yes.

Q How big were the sugar bowls?

A How big is a sugar bowl? I don't know.

Q You put it under there. How big was it?

A Well, we put napkins on it and sugar bowls and various other types of literature on top of it. We used to hide it.

Q When the property owner -- I am sorry, when the propsective guest sat down and lifted his napkin and put it on his lap, did that scare you that he would see the property report lying under the napkin?

A No, because we --

Q Yes or no? Did it scare you?

A I can't answer it that way.

Q Did you believe that putting it under the napkins was a good place to hide it?

A Yes.

Q And when the -- did you ever serve grapefruit as an appetizer?

A I didn't serve it. I ate it.

Q Did you ever eat grapefruit at these dinners?

A Yes.

Q When the prospective customer reached over to put sugar on his grapefruit, did you ever consider he might see the property report under the sugar bowl?

A Yes.

Q That you thought was a good place to hide it?

A That was one of the places.

Q Did you put any under the forks?

A No.

Q By the way, did Mr. Bondy -- was he a sales manager?

A Yes.

Q Did Mr. Bondy ever tell you be sure not to put the property reports on the table?

A I don't remember. I worked for various managers.

Q My question is did Mr. Bondy ever tell you that?

A Not that I recall.

Q Did you work for Mr. Lederman?

A Yes.

Q Did Mr. Lederman ever tell you, Nick, don't put the property reports on the table?

A He said it wasn't necessary to put them on the table.

Q Mr. Lederman said that?

A If I remember, yes.

Q I want you to remember. On your oath, did Mr.

Lederman tell you it was not necessary to put the reports on the table?

A I think so, yes.

Q Is that a guess?

A Well, I am not precisely sure. You are asking me something that happened a few years ago.

Q That's exactly what I am asking you.

A I really don't remember.

Q Who specifically told you -- and I mean who by name -- what sales manager by name told you not to put the property reports on the table?

A I don't remember by name.

Q Now, when the sales manager was speaking from the podium, he held up the sales contract, did he not?

A Yes, I think so.

Q Are you guessing about everything or do you have a recollection?

A I just don't want to say yes if I'm not sure.

Q Don't.

A I won't. But I believe he used to hold it up and start reading -- at the time he used to hold it up is when he used to read the refund guarantee.

Q To your best recollection he would hold up the contract and read the refund guarantee, right?

A Yes.

Q At that time he would tell the salesmen to make sure that each of the couples had a contract?

A Yes.

Q So that they could read the refund guarantee along with him?

A Right.

Q Am I correct -- and you would give them a copy of the contract?

A Yes.

Q Am I correct -- I will withdraw that.

You testified that holds were called out?

A Yes.

Q Am I correct that when holds were called out the property which was held pursuant to hold was very often sold?

A Sometimes, yes.

Q Did you testify this morning that property which was held was in fact sold?

A You mean to what a hold was put on?

Q Yes.

A I believe she asked me if a second or third hold was on it, can that be sold as a second or third hold and I said yes.

Q Unless the first hold sells it?

A Right.

Q That's what you testified?

A Well, whoever sold it first.

Q All right, so when a salesman or a sales person called a hold, he then discussed that property with a couple or a prospective customer at the table?

A Right.

Q If he could sell it, he sold it?

A Right.

Q You liked to sell property?

A That's how we made our money.

Q Let me show you Government's 141-A, which is a contract, February 1, 1972. This paragraph "We acknowledge receipt of copies of the restrictive covenants, the property reports filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development and any applicable public report, offering statement or prospectus required by state authorities" and there are initials there. Is that right?

A Yes.

Q You just told the customer to put his initials there?

A Yes.

Q Don't worry about it?

A That's exactly what I told him.

Q Did you tell him please don't read it?

A No.

Q Did anyone ever say, what am I initialing for?

A If they asked me I would tell them.

Q What percentage asked you?

A A very few.

Q Very few. What percentage read the contract?

A Very few.

Q On your oath very few of the people to whom you sold land read the contract?

A Yes, the basic part --

Q Is your answer yes?

A Do you want to repeat that again.

Q I say on your oath, did very few of the people to whom you sold land at a dinner, very few of them read the contract, is that your oath?

A Yes, sir, very few of them did, yes.

Q Did they read any part of it?

A Yes, the most important part was the figures.

Q They had it in their hand?

A Yes.

Q And you know that what they read were the figures?

A That's what we used to discuss mainly.

Q You know what they read was the refund privilege?

A That's what we used to go over. The figures basically and then the refund guarantee.

Q While they were holding it in their hand, you know that they did not read it, is that right?

A Well, I would assume that they didn't because in order for them to read it it would take them a little while. I used to hold it like this in front of a customer and go down the figures and if he wanted the refund guarantee, which he already knew, then I would just say give me your signature here and your initials there.

Q You did not put the figures in until after you had been told to give the contract to the customer?

A The customer got the contract when the speaker used to read the refund guarantee.

Q That was before you filled in the terms of the contract?

A Yes.

Q By the way, you know what a closing table is?

A Yes.

Q You would take a couple to a closing table?

A If there was more than one couple, yes.

Q When you took a couple to a closing table, did you take away the contract which had already been given to the other couple?

A No. Sometimes I did and sometimes I didn't.

Q Let me get this straight. Is it your testimony on your oath that on occasion you would have two couples at a table, on occasion you would take one couple to a closing table and as you took that one couple to the closing table, you would turn to the other couple and say let me have your contract back. Is that your oath?

A No, I wouldn't do that, no.

Q Did you just say you did?

A Well, I really don't remember. Sometimes I did and sometimes I didn't.

Q That is precisely my question. Is it your testimony under oath that you would on occasion, as you took one couple to the closing table to discuss a sale with them, you would turn to the other couple and say, please, potential customer, may I have the contract back?

A No, I wouldn't do that. No, I wouldn't do that.

Q That would be a little suspicious, wouldn't it?

A Yes, I would think so.

Q You did this, you say -- I withdraw that.

Did you testify this morning that until 1973

A

you used to either not put the property reports on the table or hide the property reports under the sugar bowl or the napkin?

A Yes.

MR. FLEMING: May I have this marked, please.

XX (Defendants Chester Carity and Daniel Friedman Exhibit BI marked for identification.)

Q Do you recognize BI for identification?

A Yes, it's a property report.

Q What's the date of it?

A March 4, '72.

Q That's a federal property report, isn't it?

A Yes.

Q Would you turn to the last page. What's on the right-hand side of the last page?

A It's a receipt.

MS. HYNES: Your Honor, it is not in evidence yet.

MR. FLEMING: I offer it.

(Pause.)

MS. HYNES: We have no objection.

XXX (Defendants Chester Carity and Deniel Friedman Exhibit BI received in evidence.)

(Continued on next page.)

Q BI is a federal property report dated March 9, 1972?

A Yes.

Q And there is a receipt on the last page?

A Yes.

Q With lines around it for cutting out?

A Right.

Q And it says, "I/we hereby acknowledge recipet of the federal property report. The date of copy of said report which we received is, name, address, date, name of salesman," is that right?

A Right.

Q Does that refresh your recollection that at least by March of 1972, you stopped putting the reports under the sugar bowl?

A We stopped? What do you mean we stopped?

Yeah. Well, we stopped -- we stopped hiding them or we started putting them on the table.

Q That is 1972, not 1973, right?

A Well, according to this, yes.

Q Well, you --

A Yeah.

Q So it was only from July 1971 until March of 1972 that you were putting the reports under the sugar bowl?

Yes, whenever we put them on the table.

Q I am talking about you. Don't say we. I am talking about you.

A Yes.

Q Okay.

Now, did you keep putting the New York property reports under the sugar bowl?

A No. Once they had to sign for it, we just displayed them on the table.

Q Both of them?

A Yeah, as long as they had to sign for it.

Q I got you.

Oh, how much time have you spent talking to the prosecutors --- how many days have you been down here talking to the prosecutors about your testimony?

A Four, five times.

Q And give me the total number of hours, as best you can recall.

A Maybe an hour and a half each time.

Q An hour and a half each time four or five times, a total of about nine hours?

A I would say so.

Q Did your wife come in with you?

A Yes.

Q Did they ever show you -- did the prosecutors ever show you the March 9, 1972 federal report with the receipt?

A I don't think so. They showed me the one with the receipt on the back, on the back cover, on the outside cover.

Q Did you testify this morning that one reason you personally hid the property reports, according to your testimony,was that, "they wouldn't know what they were reading anyway."?

A Yes.

Q So I take it that you think or thought that you were a little smarter --

A Because we didn't understand it ourselves.

Q What didn't you understand?

A The property report and offering statement.

Q What didn't you understand?

A Most of it.

Q What?

A Well, most of it.

Q Name one thing you didn't understand.

A As far as the exchange and everything else.

Q Why were you hiding it?

A Because we were told not to put them on the table to begin with.

Q You testified it was your practice -- withdraw that.

Why did you hide the report if you didn't even understand it yourself?

A Because we didn't want the customers to see it.

Q Did you understand the provision in the New York property report which said that the investment was a speculation and they couldn't count on resale?

Did you understand that language?

A Yes.

Q In any event, whether you thought you were smarter than the people you were dealing with or not, you were smart enough here to get immunity from prosecution, were you not?

MS. HYNES: I object, your Honor.

THE COURT: Overruled.

A I got immunity based upon --

Q Did you get immunity?

A Yes.

Q All right.

Did you hire an attorney to get you immunity?

A Yes.

Q Did your wife tell you that the prosecutors wanted her down here to the office to be interviewed?

A Yes.

Q TUe prosecutors -- did your wife tell you that the prosecutors had told her that if she didn't come down here and quote, unquote, cooperate, things could get bad for you?

A No. They told us to get a lawyer.

Q Did your wife tell you that the prosecutors had told her that if she didn't come down to quote, unquote, cooperate she could be big problems?

A No. They said they would subpoena us.

Q Did your wife ever -- they said they would subpoena you?

A Yes. Either we would come down voluntarily or they would subpoena us.

Q This was in 1976, was it not?

A Yes, it was right here.

Q It was after this indictment was filed, was it not?

A Yes.

Q Where were they going to subpoena you, did they say?

A To the trial, I guess.

Q Oh, subpoena you to the trial?

A Yeah.

Q Is that what they told you?

A Yes.

Q They were going to subpoena you to the trial and put you on the witness stand without talking to you?

A I don't know. I got a phone call from Ms. Hynes --

Q I am asking you, did they tell you that they were going to subpoena you to the trial and put you on the witness tand without talking to you?

A No.

Q Did they tell you they were going to subpoena you to a grand jury?

A No.

Q Did they tell you if you didn't come and quote, unquote, cooperate you would have some big problems?

A No, they said if we didn't come down that they would subpoena us as witnesses, so we volunteered to come down.

Q Now let me see. You say you volunteered to come down.

You hired an attorney, did you not?

A Yes.

Q And you had your attorney come down, did you not?

A Yes.

Q And you had your attorney work out a deal for you, did you not?

A Yeah, he worked it out, yes.

Q And that is your definition of volunteering?

A Well, Ms. Hynes at the time --

Q Is thatyour definition of volunteering? Yes or no?

A I can't answer it that way, yes or no. At the time that Ms. Hynes called me up, she told me to get an attorney.

Q Did you testify that you came down voluntarily?

A Yes.

Q All right. Did you testify that first you hired an attorney?

A Yes.

Q Did you testify you sent the attorney down to the prosecutor?

A Yes.

Q Did you testify you had the attorneys work out a deal for you?

A Well, yeah, if you want to call it a deal, yes.

Q It's immunity, isn't it?

A Yes.

Q You can't be prosecuted, can you?

A I didn't do anything.

Q Is that your definition of volunteering?

A Yes. I came down voluntarily. Rather than being subpoenaed as a witness, I volunteered to come down.

Q Did you pay your attorney a fee?

A Yes.

Q How much wasthe fee?

A About $700.

Q Is that less expensive than driving in and going into the prosecutor's office?

A Well, I hired an attorney because Ms. Hynes told me at the time -- I asked if I would need an attorney and she said, "Well, I suggest you hire a lawyer," and that's what I did.

Q By the way, did your attorney explain to you that you can be prosecuted -- that if you testified in this court house, you could be prosecuted for perjury only by the U.S. Attorney in this district?

A No. He just said that when I go there I must tell the truth --

MR. FLEMING: May I ask that that be stricken.

THE COURT: Strike the answer.

Answer the question.

A Do you want to repeat it again?

Q Did your attorney trell you so long as your testimony was in this court house, the only people who could prosecute you for untruthful testimony would be the U.S. Attorney's office in this district?

A I don't know -- I don't remember if he told me that or not.

Q He may have, is that right?

A He may have, yes.

Q I mean, there is a letter here that says if you tell the truth, you will be all right, is that right?

A Yes.

Q Did anyone tell you, explain to you who prosecutes you if you don't tell the truth?

A Well, it could be the court itself if I perjure myself.

Q It could be the U.S. Attorney's office, too, could it not?

A Sure.

Q You know we can't, don't you?

A No, I don't know that.

Q You don't know that private attorneys have no power to prosecute someone for perjury, is that right?

A I know I can be prosecuted for perjury.

Q That is not my question.

Are you saying that you do not understand that a private attorney has no power to prosecute you for perjury?

A Yes, I understand that, that they can't.

Q They cannot?

A Right.

Q That only the U.S. prosecutors can prosecute you for perjury if you testified falsely in this court house?

A Right.

Q Right?

A Yes, I guess so, the court itself.

Q You understand that, don't you?

A Yes.

Q You think the court itself can prosecute you?

A For perjury, I guess so.

Q You don't know as a matter of fact that the only people that can present a case against you for perjury in the grand jury is the very office which is using your testimony?

MS. HYNES: Your Honor, it has been asked and answered several times.

THE COURT: Overruled.

A No, I'm not an attorney, I don't know that. As far as I know, if a person perjured themselves, it's the court themselves that can prosecute you for perjury.

Q And you have never discussed that with your counsel, is that right?

A As far as what?

Q Prosecution for perjury and who would do the prosecuting.

A No.

MR. FLEMING: I have nothing further.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Masone, you testified earlier today that the fly and buy program was not successful.

A So far as we were concerned it wasn't, yes.

Q Are you aware of how many couples or units went to Albuquerque, Rio Rancho, on the fly and buy program?

A No.

Q Are you aware that there were probably 142 couples that went there?

A No.

Q Are you aware of the percentage of the people who went to Albuquerque and Rio Rancho on this program who purchased land while they were there?

A No. I would be guessing if I said it.

Q If I were to tell you of the 142 people --

MS. HYNES: Your Honor --

MR. ARKIN: Wait. Let me finish my question.

THE COURT: I assume he is going to tie it up.

MR. ARKIN: I certainly am.

THE COURT: You made some representations in some areas to tie it up with some facts. I will hold Mr. Arkin to the same rule.

MS. HYNES: I agree, but the witness testified he doesn't have any knowledge of this.

THE COURT: On cross examination you are bound by the first answer?

They didn't teach you that in law school, did they, Ms. Hynes?

Go ahead.

Q Sir, do you know that of the 142 couples, units, if you will, who went to Albuquerque on the fly and buy program, that 75 of those couples purchased land or condominiums? Did you know that?

A No.

Q That amounts to 52.8 per cent of all those who went down there to see Rio Rancho?

A No, I didn't know that.

Q And yet you call the fly and buy program unsuccessful, sir?

A Well, I --

THE COURT: Wait, wait, wait. Now you are assuming the truth of the fact.

He says he doesn't know. You are entitled to know whether he knew the figures.

MR. ARKIN: All right, I withdraw it, then.

(Continued on next page.)

Q Mr. Masone, do you recall sometime before you spoke to Ms. Hynes and sometime in the early part of this year, about February 18, 1976, receiving a telephone call from my partner, Mr. Mark Arisohn?

A I think my wife spoke to him.

Q Do you remember Charlotte Masone spoke to Mr. Arisohn, is that right?

A I think so, yes.

Q And towards the end of that conversation, you spoke to Mr. Arisohn, too, is that correct?

A I don't remember.

Q Do you remember talking to Mr. Arisohn about what would happen in the event -- I am talking about the period of time when you were employed by ATC -- what would happen if it came to the attention of management if you had made any misrepresentations?

A No, I don't remember talking to him about that.

Q You don't remember telling Mr. Arisohn that if you were ever found to have made a misrepresentation, you would be fired immediately?

A Over the phone?

Q Did you tell Mr. Arisohn that over the phone, yes?

A Yeah, I might have said that, but I really don't remember.

Q You might have said that because that was true, isn't that so?

A Yes.

Q And do you remember telling Mr. Arisohn that you were told by Dan Friedman that --

MS. HYNES: Your Honor --

THE COURT: Yes?

MS. HYNES: I am going to object to this point. It is putting the credibility of Mr. Arisohn into these questions.

THE COURT: So far it has not been put in.

He has not denied yet.

MS. HYNES: We are continuing on this line of questioning.

THE COURT: I am sorry, he has not denied, he has admitted, therefore, there is no credibility of Mr. Arisohn in question.

Go ahead.

MR. ARKIN: Thank you, your Honor.

Q Do you remember saying, sir, in the same conversation that Dan Friedman had told you and told others at the time that you were employed by ATC that you cannot tell a customer anything which could not be printed openly in the New York Times?

A Yes.

Q And that's what you were told, isn't that so?

A Yes.

MR. ARKIN: I have no further questions.

THE COURT: Redirect.

MR. FLEMING: Your Honor, I am sorry, I am supposed to appear before Judge MacMahon, if I can be excused. Mr. Arkin will cover for him.

THE COURT: You may.

MR. ARKIN: Yes, your Honor.

THE COURT: Mr. Arkin, you can cover for him.

MR. ARKIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Masone, you just testified that in the conversation with Mr. Arisohn there was a statement made that Dan Friedman said you couldn't say anything that couldn't be printed in the New York Times.

Do you recall when that statement was made, approximately?

THE COURT: By the witness to Mr. Arisohn or by Mr. Arisohn to the witness?

MS. HYNES: Let me clarify it.

Q Did Mr. Dan Friedman make a statement in your presence that you couldn't say anything that couldn't be printed in the New York Times?

A Yes.

Q When did he make that statement?

A I don't remember. It was --

Q I am sorry.

A I think it was sometime, you know, within -- just before the time period that I left.

Q And you left in August of 1965?

A 1975.

Q 1975. I'm sorry.

And what was the occasion? Was there a sales meeting?

A Yes.

Q And what was the occasion of that sales meeting?

A At that time, you mean?

Q Yes.

A Well, he went -- Dan Friedman had conducted a meeting, you know, the meeting and he went through the whole property report and offering statement.

Q And this was sometime just immediatley prior to August of 1975, when you left?

A I'm not sure of the exact time.

Q Approximately, though, that was the time period?

A Yes, I would say so.

Q Was that the only sales meeting that Dan Friedman ever attended that you were present at?

A I think so, yes.

Q Well, do you recall during the other years of your employment at the company whether Dan Friedman ever attended a sales meeting?

A There might have been one or two that he did, yes.

MS. HYNES: If I just might have a moment, your Honor.

(Pause)

Q Mr. Masone, I am going to show you what has been marked Government Exhibit 1002, and ask you if you can identify that (handing).

A Yes. This was a property report.

Q And was this the property report that Daniel Friedman was reviewing at this sales meeting that you said he attended.

A I think so. I'm not sure, but I think so.

Q Let me direct your attention to the date on this property report and ask you if that refreshes your recollection if that was the property report that Mr. Friedman was reviewing with the sales people (indicating).

A Yes.

MS. HYNES: I offer this in evidence, your Honor.

MR. ARKIN: Can we have a side bar, your Honor?

THE COURT: Yes.

(At the side bar)

MR. ARKIN: Your Honor, the difficulty with this particular report coming into evidence is that it contains reference to the FTC prosecution and the pending grand jury investigation, accordingly, it contains material which I believe to be both irrelevant and highly inflammatory.

If that could be redacted from this property report, we would have no objection to that going in.

MS. HYNES: Your Honor, Mr. Arkin opened the door. The meeting that took place with Mr. Friedman was after the indictment, it was after the FTC --

THE COURT: No, it was before the indictment.

MS. HYNES: It was after the grand jury investigation and it was after the FTC complaint --

MR. ARKIN: Please keep your voice down.

MS. HYNES: If this witness was asked those questions, that is what would come out, that that was the reason for the meeting with Dan Friedman and that Dan Friedman --

THE COURT: Does he know?

MS. HYNES: Pardon? He was told at that meeting.

MR. ARKIN: He said he was not sure.

MS. HYNES: It was after the grand jury investigation. It was something that was brought out by Mr. Arkin at the meeting that he attended.

THE COURT: Wai a second.

Was this witness told that this meeting that Dan Friedman was conducting was because of the pendency of the grand jury investigation?

MS. HYNES: Statements were made -- I don't know if it was that in haec verba, but he was told that there was the FTC complaint, that there was a grand jury investigation and they went through this new property report, which was issued, which mentioned the FTC and the grand jury.

THE COURT: Ask him what else Mr. Friedman said at the meeting. If he is not going to say he was told at the meeting that there was a grand jury investigation and that is why you couldn't say anything that couldn't be published in the New York Times, ask him what else Mr. Friedman said.

If you can get him to say that, fine; if you can't it is precluded.

MS. HYNES: I want to mention one other thing.

The witness has testified that he went through the property report.

The property report contains, as Mr. Arkin has just pointed out, the statement about the grand jury investigation and that is what Mr. Friedman was going through one of the items in the property report.

THE COURT: I don't know that he said he went through the property report.

MS. HYNES: He just did. I mean, we can have his testimony read back, but he said that was the purpose of the meeting, that Mr. Friedman went through the property report.

The purpose of the meeting was to explain to the sales people --

THE COURT: Ask this witness what else Mr. Friedman said.

If you can't get him to say he made mention of the grand jury investigation or the FTC investigation, then I am going to say you are precluded, without leading the witness.

(In open court)

CONTINUED REDIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Masone, you testified that shortly before you left the company, and you left the company in August of 1975, that there was a meeting at which Mr. Daniel Friedman addressed sales personnel, is that correct?

A Yes.

Q Who was at that meeting?

A Everyone had to attend.

Q Everyone had to attend?

A Yes.

Q And what was the purpose of that meeting?

A The purpose of the meeting, I guess, was to go through the property report and explain the property report and offering statement and explain each paragraph.

Q Was this a property report that was different from other property reports?

A I believe it was the one you showed me.

Q Do you recall what was said by Mr. Friedman at that meeting when he went through the property report?

A Well, he took each individual paragraph and asked questions on it and then he explained exactly what each paragraph meant.

Q Do you recall the specific topics that were covered at that meeting in going through that property report?

A No. Each -- no. Each paragraph was gone over very thoroughly.

Q Had Mr. Friedman done that in the past?

A Well, not that I remember, no.

Q I am going to direct your attention to paragraph 25 at page 14, and ask you to look at that and read it to yourself and ask if that refreshes your recollection as to whether Mr. Friedman reviewed that paragraph of the property report (handing).

MR. ARKIN: I would ask your Honor to look at the very same paragraph --

THE COURT: I am sorry, objection overruled.

A Yes, he covered that paragraph.

THE COURT: What did he say?

THE WITNESS: Well, he said that the complaint was merely -- that the FTC had merely a complaint against Rio Rancho Estates and where we would prove that they were wrong.

That was the basic thing what he said about it.

THE COURT: Go ahead, Ms. Hynes.

Q And what did he say in connection with the statement that you testified to that anything that sales people say must be something that could be printed in the New York Times?

Is there anything --

MR. ARKIN: Objection.

THE COURT: Overruled.

Q What did he say in connection with that statement? Was there any discussion?

A Meaning that no one -- that no one can misrepresent the product, that if they did they would immediately be dismissed; meaning whatever you told the customer was good enough to print in the New York Times.

Q Was there conversation between the sales people and Mr. Friedman at that meeting concerning that property report?

A Yes. There were various -- well, it was an open meeting.

Q Do you recall whether the sales people made comments to Mr. Friedman with respect to their ability to sell the land?

A Yes.

Q And what do you recall the sales personnel saying to Mr. Friedman?

A As far as the selling of the land?

Q Yes.

A Well, that because of the FTC complaint, it was a little more difficult to sell.

Q Do you recall what Mr. Friedman said -- did Mr. Friedman say anything back to the sales people?

A That is when he made the statement that these allegations are only allegations and they don't have proof of that.

The way that they would show that AMREP was right.

Q Shortly thereafter did you leave the company?

A I left in March of '76. Whenever that meeting was --

Q March of '75, you mean?

A Yes.

MS. HYNES: Your Honor, I will offer this into evidence.

MR. ARKIN: Same objection, your Honor.

THE COURT: Same ruling.

Q Mr. Masone, do you recall testifying on cross examination by Mr. Fleming that if you had two selling units, I believe they were called, at a table, you would take one unit to a closing table, is that correct?

A Yes.

Q How did you make the choice as to which of the units, selling units you would take to the closing table?

A Well, you had to use your own discretion to see which one you felt was more interested and that is the one you took out first.

Q After you took that couple to the closing table, did you then return to the main table to the other couple that had been waiting?

A Yes, if they were still there, yes.

Q What percentage of the people who were left at the table did you close, if you recall?

A Not too many.

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

MR. DEVORKIN: The government calls Elinor DeWitt.

ELINOR DE WITT, called as a witness by the Government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

XXXX BY MR. DEVORKIN:

Q Mrs. DeWitt, please keep your voice up so that everybody can hear you.

Where do you live?

A 585 West End Avenue in New York.

Q How old are you, if you don't mind me asking?

A Sixty.

Q I am sorry?

A Sixty.

Q Are you married?

A Widowed.

Q Do you have any children?

A Two.

Q What are their ages?

A I have a daughter of twenty-eight and one of twenty-four.

Q What do you do for a living?

A I work for an accountant.

Q Approximately how much do you earn?

A About $15,000 a year.

Q What is your education background?

A I have a masters degree.

Q In what subject?

A Liberal arts.

Q Are you taking any courses today?

A Yes.

Q Where at?

A Baruch College.

Q Do you own any lots at Rio Rancho Estates?

A Yes.

Q How many lots?

A Six.

Q Approximately how many acres?

A A little under four acres, 3.7 or 3.8.

Q Have you paid in full for your lots?

A Yes.

Q Do you recall how much money it is that you paid in full?

A Approximately $17,000.

Q Does that include principal and interest?

A No, that I believe is principal.

Do you owe them any money?

THE WITNESS: No.

THE COURT: Go ahead.

MR. DEVORKIN: May I have this marked 168-AA.

(Government Exhibit 168-AA marked for identification)

xxxx

Q Let me just show you Government's Exhibit 168-AA for identification.

Does that refresh your recollection about whether your payments of $17,000 include interest?

A Well, yes, of course.

Q They do include interest?

A Yes, they do.

MR. ARKIN: Are you offering that, Mr. Devorkin?

MR. DEVORKIN: Not at this time.

MR. ARKIN: May I see the document that you showed the witness, please?

Q Do you own these lots alone or do you own them with someone else?

A No, I own them equally with my sister.

Q How old is your sister?

A Seventy-two.

Q For what purpose did you buy these lots?

A For investment.

Q What did you expect to do with the lots?

A I hoped to be able to sell them in the not too distant future for a profit.

Q When did you first have any contact with Rio Rancho?

A 1970.

Q What was the nature of the contact?

A I was invited to a dinner.

Q Did you get an invitation?

A Yes.

Q Did you go to the dinner?

A Yes, we did.

Q When you say we?

A My sister and I.

Q Where was it held?

A I don't remember the name of the place, but it was in mid-Manhattan and it was in a hotel.

Q What happened when you arrived at the dinner?

A We were greeted by several people. A young woman by the name of Pat Mack told us that she was the one who was going to talk with us and she escorted us to the table.

Q Were there any other people at your table?

A I am sorry, I didn't hear you?

Q Were there any other people at your table?

A Yes, there were.

Q About how many?

A I know definitely of four others. I am not sure beyond that.

Q How many other tables were there in the room?

A I didn't count, but there were many others similar to ours.

Q Initially when you got to your table, what, if anything, did your sales person say to you?

A I cannot remember what was said initially.

Q Did there come a time when you saw some films that evening?

THE COURT: Wait, before we get to that, you said you were met at the door and you mentioned a name. I didn't get the name.

THE WITNESS: Pat Mack.

THE COURT: What did she say to you?

THE WITNESS: She said she was going to be the one with whom we would have whatever dealings we would. I am sorry, sir, I don't remember more exactly than that.

THE COURT: Thank you. Go ahead.

Q Did there come a time in the evening when you saw some films?

A Yes.

Q Was there a speaker in the room?

A Yes, there was.

Q Where was the speaker in relation to the table?

A Well, he was in front of the whole group of tables standing rather alongside of the screen.

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Q Before the films began and before the speaker started to talk, did your sales person say anything to you?

A Well, we were going to see a wonderful film which would tell us all about Rio Rancho.

Q Did she say anything else about Rio Rancho at that time?

A Not that I remember.

Q Will you tell us what you recall from the films and the speaker, from the beginning of the presentation to the end?

A Well, the speaker commented as the film went on. The film was a portrayal of life at Rio Rancho showing the swimming pool and some tennis courts and people riding horses and children playing and a night club and the sky was very beautiful and there were trees. There was a small business office out of which a group of people came.

Then there was the governor of the State of New Mexico who said what a wonderful state New Mexico was and then there was Senator Montoya who talked some about the great future of his state.

Sometime in the film, I don't remember whether it was the beginning or the end of the film, a map was projected onto the screen and at this point the speaker, whatever filming process there was, stopped and the speaker began to explain the map.

Q What did the speaker say?

A He said that -- he pointed out Albuquerque, which was rather to the south and east of where Rio Rancho was located on this map. He indicated that land on three sides of Albuquerque was closed to development because it was owned either by the federal government or Indian reservations or was entailed in some way and said that the only direction in which any growth in this area could take place would be in the direction of Rio Rancho.

Q Did he say anything else?

A Well, he indicated that there were houses being built; that a building which was for retired secretaries was in the process of being built; that there was a group of condominiums, I cannot tell you honestly whether he said they had been completed or whether they were in the process because I know I did see them.

There was a small administrative building in the process of being built and there was one small factory which dealt with some kind of electronic equipment, transistors or something that had been built there.

Q Do you recall anything about -- withdrawn.

Do you recall the speaker saying anything about land prices or land values in Albuquerque or at Rio Rancho?

A Not specifically.

Q Do you recall in substance anything he said?

A In substance it was that this part of the country was the only place in which land values could appreciate because there was no land available anywhere else.

Q When you say this part of the country, what do you mean?

A The southwest.

Q Was anything said with respect to land values or land prices of Rio Rancho?

A No, not at that point.

Q Was anything else said later about that?

A At another time.

Q When you say another time what do you mean?

A Not at this dinner. It was at another time.

Q After the speaker finished his presentation, what, if anything, do you recall happening next?

A At this point Miss Macklin who had some piece of paper with listings -- oh, the speaker said that the land which was available for sale that evening was limited to a certain group of lots since there were dinners like this taking place all over the country and not the same things could be made available to everybody because you couldn't have five or six people trying to buy the same piece of land.

So Miss Macklin had a list of parcels or lots which were available and she held this in her hand and immediately when he stopped talking she got up and shouted I have a hold on and mentioned some number and the same thing happened at all of the other tables.

Q Somebody stood up at the other tables --

A And shouted I have a hold on and mentioned a number. At that particular time I didn't know what the numbers meant.

Q Did Miss Macklin or Mrs. Macklin say anything to you about what was happening at that point?

A Then she sat down and explained that she had a reservation on whatever this number was and showed us the number crossed off on a piece of paper and that the other listings on that piece of paper were available to be bought that night.

Q Did she explain what else was happening in the room at that time?

A No, she didn't explain it, but I assumed that this was --

THE COURT: Wait. You can't tell us what you assumed.

THE WITNESS: All right.

Q Did she say anything to you about buying the lots at Rio Rancho or why you should buy a lot at Rio Rancho?

A Yes, she said it was a wonderful retirement place. When we indicated, my sister and I both indicated that we were not interested in retiring, we were interested in investment, she said this was a wonderful investment. That she owend a great deal of property and she was buying it as fast as she possibly could.

Q Did she explain why it was such a good investment?

A Well, the location, the climate was ideal particularly with people who had either respiratory or arthritic problems and that it was the place where this country was going to go in the not very distant future.

Q Did you sign a contract?

A Yes, I did. We did.

Q Showing you Government's Exhibit 168-A for identification, would you take a look at it and tell us whether you recognize it?

A Yes, sir.

Q What is it?

A It is the contract -- it is the original contract we signed.

Q That night?

A That night.

MR. DEVORKIN: I offer 168-A.

THE COURT: What number?

MR. DEVORKIN: 168-A.

MR. ARKIN: No objection.

XXX (Government's Exhibit 168-A received in evidence.)

THE COURT: We will have a recess.

MR. ARISOHN: Your Honor, may I now hand out Defendant's Exhibit BG to the jury?

THE COURT: Yes.

MS. HYNES: Your Honor, if I might. We asked yesterday to have the jury be able to look at offering statements and property reports.

THE COURT: Leave that until tomorrow. They have enough to look at this one.

MS. HYNES: On Monday, then, we will do that.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

THE COURT: Mr. Devorkin, you may proceed.

MR. DEVORKIN: Thank you, your Honor.

(Pause.)

MR. DEVORKIN: Your Honor, may I just read a part of 168-A?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 168-A in evidence to the jury.)

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Celia Pers is your sister?

A Yes.

Q Was your sister working at the time?

A Yes.

Q At the time you made this investment in Rio Rancho lots, did you have any other investments?

A Yes.

Q What kind of investments?

A Some securities, some debentures, all in the nature of securities.

Q You mean common stocks?

A No, not all common stocks. Some common stocks and some debentures.

Q How much money were you earning at the time?

A 12, 13,000, very little difference from today.

Q Were there any pieces of literature at your table?

A Yes. There were magazines, there were highly colored maps.

Q Anything else?

A Well, what I would call throw-aways.

Q What do you mean by that?

A A single sheet describing the area or with a blurb on it saying "the southwest" -- it didn't say that, no, but that's what I would mean by it.

Q Let me show you Government's Exhibit 388 in evidence (handing).

Do you recall seeing anything like that?

A I don't recall this outside.

Q Would you take a look through it and see if there is anything in there that you do recall?

A This page (indicating).

Q Indicating page --

A 11.

This -- there was a single sheet of paper with this (indicating).

Q Page 12?

A Page 12. I don't remember anything else.

Q Let me direct your attention to page 8 and 9.

A Oh, yes.

Q Do you recall anything like that at any time during the dinner?

A Yes.

There was a single sheet of paper with this kind of a map on it in which the Albuquerque is surrounded on three sides.

Now, I don't -- I don't remember the exact designation of which side was which, but it did say that on one side it was bounded --

THE COURT: You do have such a map?

MR. DEVORKIN: Yes, sir.

THE COURT: Why don't you show it to the witness?

Q Would you look at Government's Exhibit 271 (handing).

THE COURT: Is that the type of map you are referring to?

THE WITNESS: No.

THE COURT: What?

THE WITNESS: No, sir.

Q It's different?

A It's that kind of thing, the one that is like this (indicating).

MR. DEVORKIN: May I show that particular map to the jury, your Honor?

THE COURT: Yes.

Anything else or just the map?

THE WITNESS: What I would call a throw-away, sir.

MR. DEVORKIN: I am not sure the jurors at the end saw what I was showing,your Honor.

THE COURT: You exhibited that brochure before.

MR. DEVORKIN: I know. I just wanted to let them know which one the witness was picking out.

THE COURT: All right.

(Showing to the jury.)

Q Do you recall seeing any property reports or offering statements before you signed the contract?

A I don't remember any.

Q Did you get any literature to take home that night after you signed the contract?

A Yes, yes. There were magazines and, again, the throw-away and there were pieces of paper. What I -- what was really in this collection of things that we had to take home I cannot tell you.

Q Let me show you what has been marked as

Government's Exhibit 168-C for identification (handing).

Do you recognize that?

THE COURT: What number is that?

MR. DEVORKIN: 168-C, your Honor.

A Yes, sir. This is what was given -- this was part of what was given to me.

Q That night?

A Yes.

Q Is that the allocation sheet that you were shown?

A Yes.

MR. DEVORKIN: I offer 168-C.

MR. ARKIN: Just a brief voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Miss DeWitt, I am Stanley Arkin. I represent certain of the defendant here.

A Yes.

Q Miss DeWitt, do you recognize the handwriting on this particular piece of paper, the second sheet of the exhibit for identification, 168-C (handing)?

A I can't -- do I recognize it as belonging to anybody in particular?

Q Yes, ma'am.

A It's not mine.

Q It's not your handwriting.

I am talking about the inked handwriting at the bottom of the page.

A That also is not mine.

Q And the ink lines on the first page?

A That's the way it came to me.

Q With the writing and everything on it?

A Yes.

MR. ARKIN: We have no objection, then.

XXX (Government's Exhibit No. 168-C marked for identification received in evidence.)

MR. DEVORKIN: May I just pass it to the jury, your Honor, as I continue my examination?

THE COURT: You have had that before the jury. They know what an allocation sheet looks like.

MR. DEVORKIN: Okay.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Did you attend any other dinners after this?

A Yes.

Q Approximately how many?

A I know of two.

Q Did you get invited to those dinners?

A Yes. They said this one was for the purpose -- we were told of telling us of the advances that had been made at Rio Rancho.

Q Who told you that? Who told you that?

A The speaker at the dinner.

Q And did you go to those dinners with anyone else?

A My sister.

Q Did you hear a presentation of any kind?

A Yes. What was presented to us was any new building that had been put up, the fact that the country club had now been completed and the swimming pool was completed and in use and I believe the golf course was ready to be used, that there had been a medical building put up at the property and the administration building was larger than it had been before.

Q Was any reference made at the subsequent dinners to price increases that had occurred at Rio Rancho Estates?

A Well, it was said that the land was much more valuable now that all these new buildings had been put up and that the land had appreciated in value.

Q Was anything said about price increases of the land?

A No.

Q Did you ever visit Albuquerque or Rio Rancho?

A Yes.

Q When was that?

A The February after -- February or March after we paid our down payment -- after we signed the contract.

Q That was February or March of 1971?

A Yes.

Q Did you go on a Rio Rancho tour or did you go alone?

A We went on a tour.

Q Did you go with your sister?

A Yes.

Q how much did the tour cost you?

A I think $430 for both of us.

Q And how much had you already paid Rio Rancho for your lots at that point?

MR. ARKIN: Objection,your Honor. That has been asked and answered and he has read it to the jury in the contract.

THE COURT: Not as of the time of the tour.

A We paid the down payment, and I don't know whether we had paid December, January and February and March or -- it was either two, three or four payments on account of the --

Q Do you remember what day of the week you left for Albuquerque?

A Thursday.

Q I am sorry?

A On a Thursday.

Q And how long did you stay in Albuquerque?

A We left Albuquerque on Sunday.

Q Can you just briefly describe the flight out there, what you did on the flight?

THE COURT: What she did on the flight?

MR. DEVORKIN: Yes, what she and the other people in her group did.

A Well, this was apparent --

Q Just tell what happened.

A We were wined and dined. From the minute we were on the plane, we were given an enormous breakfast and people could have as much to drink and eat or anything that they wanted. It was first class service unlimited.

Q What happened when you landed in Albuquerque?

A We were met by a bus and we were taken to the Panorama Inn, which was on the Rio Rancho property. We were assigned rooms and then asked to come into a buffet dinner.

Q How many days did you say your tour lasted?

A From Thursday till Sunday.

(Continued on next page.)

Q Briefly, what kind of things did you do while you were on the tour, and did you do them alone or with the group?

A Well, everything was done in the grou, with the exception of visiting your property.

We were taken on sightseeing tours of the area, including Albuquerque, an Indian reservation -- what else did we do? Whatever territory the bus traveled enroute to either of these places.

We were taken to a night club for dinner one night -- two nights, as a matter of fact.

We arrived Thursday, had the buffet dinner, we had the two night club dinners Friday and Saturday, and then Sunday we had breakfast and then came home.

Q When you were traveling around the area in this bus, did you see any vacant land?

A Yes. There was a great deal of vacant land, and some of it was indicated as being owned by the Indians, who were part of the tour we had gone to see, and some of it was owned by the federal government and some of it was just the foothills of the mountains that surrounded the area.

Q Is that what you were told by the --

A Yes.

Q -- by the team from Rio Rancho who were with the tour?

A No.

There was a bus guide. There was a tour guide, but it was not -- I think it was -- I do not believe it was somebody from Rio Rancho. I think it was a guide.

Q Do you know who it was?

A No, I do not.

Q It was a tour guide who told you those things?

A Yes.

Q Did you have any free time during the tour?

A About enough to take a bath and change your clothes.

We did have some free time just before we left Albuquerque on Sunday.

Q Was that after you had seen your property?

A Yes.

Q When was it that you got to see your own property?

A On I believe it was Saturday.

Q Did you go alone or with a company employee?

A A company employee drove us out in a car.

Q You and your sister?

A Yes.

Q What happened, if anything, when you got to your particular lot?

A Well, we both were -- I was very upset, because it was not what I had understood my lot to be.

When I had been shown a map at the dinner, it seemed to be an odd-shaped kind of piece of property. It was not three straight or six straight adjacent lots drawn neatly into rectangles, it had appeared to me to be an oddly shaped lot that seemed to me to be a corner, and I said that this was not what we had selected, and we spent very little time there, went right back to the office.

Q The lot that you did see, did it have development on it or not?

A No, sir.

Q It was barron, I take it?

A Yes.

MR. FLEMING: I object.

THE COURT: Strike the word "barron".

Q What did the lot look like that you saw?

THE COURT: Did it have anything on it?

THE COURT: Cactus.

Q Were you taken back to the office?

A Yes.

Q Who did you see back at the office, if anyone?

A Mr. Geller.

Q What, if anything, did you say to Mr. Geller?

A We told him that we had -- I told him that - we had understood this to be -- that what we had bought was a corner lot and not what we had been shown.

Q Did you say anything to him about the lack of development on your lot?

MR. FLEMING: If your Honor please, could the question be just what was said?

THE COURT: What this witness said.

MR. FLEMING: Without the leading.

Q Do you recall what else, if anything, yousaid to Mr. Geller about your lot or about the area in which your lot was?

A Well, I said --

THE COURT: In other words, what we would like to know is everything you say you said to Mr. Geller and everything that Mr. Geller said to you.

A I said it's in the middle of nowhere and you have these lots are right in the middle -- in the middle of nowhere. There was nothing on either side and there was absolutely -- appeared nothing was going -- and there was no development and where were the utilities, which he said -- which he had said were being put out all over

Rio Rancho.

And he said to relax, not get excited, we could change, if I didn't like these lots we could change it for other lots in the same area or in a different area, and what was I worrying about anyway, that particular area, which is No. 25, was going to be the Scarsdale of Rio Rancho.

Q Was anything said to you about the growth of Albuquerque at that time?

A Well, no matter when we met anybody from the organization, we were always told that the growth of Albuquerque was booming and there was no place else they could go except toward Rio Rancho.

Q After Mr. Geller spoke to you, what, if anything did you and your sister do?

A Well, we went back, and he indicated -- he showed us a piece of property -- no, I don't remember whether we went back.

He showed us a piece of property either going back or on a map, I don't remember which, which was six lots, but it was an entire block front and included two corners, which he said was stremely valuable property because directly in front of us was Indian owned land -- no, that was federally owned land which could never be touched.

On the one -- if I am looking this way, on this side were the Siandia Mountains and you certainly couldn't build anything there, and this way was Albuquerque, so that this was very valuable land that if we wanted to we could change the first purchase for these lots and it was a little larger property, and that's what we now own.

Q Did you change your first lots in for those lots?

A Yes, sir.

Q Were those other lots less expensive or more expensive?

A They were more expensive.

Q I show you what has been marked as Government Exhibit 168-B for identification (handing).

A Yes.

Q Do you recognize those documents?

A Yes.

Q What are they?

A Well, this was an exchange contract showing the changing of the first purchase for this one, and this was a revised schedule of what the payments would be.

MR. DEVORKIN: I offer 168-B.

MR. ARKIN: No objection.

xxx (Government Exhibit 168-B received

in evidence)

THE COURT: February 13, 1971 was the contract?

THE WITNESS: Yes.

THE COURT: Is this the same unit that you had before or is it a different unit?

THE WITNESS: The same unit, sir.

THE COURT: Unit 25?

MR. DEVORKIN: Yes,your Honor.

THE COURT: And that was the original purchase in Unit 25?

MR. DEVORKIN: Yes, your HOnor.

THE COURT: All right.

MR. DEVORKIN: May I just read a very small portion of this, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 168-B in evidence to the jury)

Q I take it you returned, then, to New York, after the tour?

A Yes.

MR. DEVORKIN: Mr. Clerk, can we have this marked Government Exhibit 168-E.

(Government Exhibit 168-E marked for identification)

MR. DEVORKIN: Will you mark this as Government Exhibit 168-F, please.

(Government Exhibit 168-F marked for identification)

xxx

Q Mrs. DeWitt, let me show you Government Exhibit 168-E for identification.

Do you recognize it?

A Yes, yes.

Q Where have you seen it before?

A It was in the folder -- my folder that I gave you.

Q Where did you get it from?

A I got it from the Rio Rancho Corporation.

Q And what, if anything, did you do in response to Government Exhibit 168-E?

A Well, I changed this, because at this point --

Q Just tell us what you did.

A Well, I took advantage of this insurance bonus offer, but I changed the figures because they no longer pertained.

Q Let me show you Government Exhibit 168-F for identification.

(Handing)

A Well, this is the change. This represents the changes that I made in the amounts and this is my check.

Q Which you sent to Rio Rancho?

A Which I sent to Rio Rancho Estates, yes.

MR. DEVORKIN: I offer 168-E and F.

MR. ARKIN: No objection to 168-F.

(Government Exhibit 168-F marked for identification received in evidence)

MR. ARKIN: No objection to 168-E.

(Government Exhibit 168-E received in evidence)

MR. DEVORKIN: May I read a portion of those, your Honor, to the jury?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibits 168-E and F, respectively, in evidence to the jury)

Q Mrs. DeWitt, did you ever contact Rio Rancho Estates about selling your property?

A No, I did not.

Q Did you ever contact ATC Realty about selling your property?

A No, sir.

Q Let me show you Government's Exhibit 168-D for identification.

Do you recognize it?

A Yes, this is my check.

Q To whom did you send this check?

A Rio Rancho.

Q Did you send it in the mail?

A Yes.

Q Do you recall what address you sent it to?

A The Chemical Bank in New York. The envelope was supplied.

Q There was an envelope supplied to you by Rio Rancho?

A Yes.

Q With the address of the Chemical Bank in New York on it?

A Yes.

MR. DEVORKIN: I offer 168-D.

MR. ARKIN: No objection.

(Government Exhibit 168-D received in evidence)

(Mr. Devorkin read from Government Exhibit 168-D in evidence to the jury)

Q Mrs. DeWitt, if you had known that AMREP Corporation had commissioned a report which stated that the growth of Albuquerque was to the northeast and would have no effect on Rio Rancho for twenty years, would you have purchased your property for investment?

A No.

MR. DEVORKIN: No further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. DeWitt, when you said on direct examination you worked for an accountant, I gather you meant to say that you were an accountant yourself?

A No, I am not.

Q Is your sister an accountant?

A Yes.

Q Is she certified?

A No.

Q She is a public accountant?

A Yes.

Q In what capacity do you work for an accountant?

A It's a little vague, but I will do the best I can to describe it.

We handle people's financial affairs in the sense that they send all of their income to our firm. We pay their bills. We make sure that they pay their taxes. We handle the affairs of people who are not able to handle their own.

Q Do you give them advice, too?

A I don't.

Q Does the person for whom you work give them advice?

A Yes.

Q How long have you been in that line of business?

A About thirteen years.

Q How long was that?

A About thirteen years.

Q Your sister, for whom does she work?

A Herself.

Q She does public accounting on her own?

A Yes.

Q People's income tax returns and that kind of thing?

A Yes.

Q Does she do any accounting for companies on their books and records?

A Yes.

Q Have you ever done that kind of work?

A No.

MR. ARKIN: Would you mark this.

(Defendant Howard Friedman and Henry Hoffman Exhibit BJ marked for identification)

(Defendant Howard Friedman and Henry Hoffman Exhibit BK marked for identification)

Q Mrs. DeWitt, I show you Defendants Exhibit BK for identification.

Are you able to identify the signature at the bottom of the page?

A It is mine.

Q In showing you this document, does it refresh your recollection as to what occupation you described yourself as having when you filled out this particular form?

A Yes- sir.

Q How did you describe yourself then?

A As an accountant.

Q Are you able to identify Defendants Exhibit BJ?

A Yes.

Q Was this a questionnaire which was sent to you by the government and which you filled out?

A May I see it?

Q Yes, ma'am, absolutely.

A So that I know what it is.

Q I believe this is the front.

A Oh, all right. This is my handwriting.

Q Do you recall filling out a questionnaire for the government?

A Yes.

Q That was after you heard about the case?

A Yes.

Q Do you recall how you described your occupation in that questionnaire?

A Yes.

Q How was that?

A As an accountant.

Q Mrs. DeWitt, are you president of a corporation?

A I beg your pardon?

Q Are you president of a corporation?

A No.

Q Have you ever heard of a company called the Emanuel IVOTS?

A Emanuel No. 1 IOTS, is that what you are referring to?

Q I gather I am, yes.

A Well, that is a philanthrophic.

THE COURT: Independent Order of True Sisters.

MR. ARKIN: Thank you, your Honor.

THE COURT: The Court will take judicial notice of the fact.

MR. ARKIN: Thank you.

Q You were president of that?

A Yes.

Q That is a charitable organization?

A Yes.

Q Are you involved in any other businesses aside from the one which you spoke about before where you manage people's money?

A No.

Q Is your sister?

A Does she own any businesses?

Q Is she involved in any other businesses aside from being a public accountant?

A I don't understand what you mean by being involved.

Q Does she manage real estate or is she a partner in some other kind of business?

A She did at one time. I don't know what she's going with that now.

Q She lives with you, doesn't she?

A No.

Q She did for a while?

A No.

Q Did you live near each other?

A No.

Q Now, you said that you have investments in stocks.

A Yes.

Q Have you had those for a number of years?

A Some of them.

Q Give me an example, for how long is the longest you have had a stock investment?

A Oh, I would say 25 years.

Q So you have had stocks on and off for some 25 years, is that right?

A Yes.

Q Do you also own some real estate aside from Rio Rancho Estates?

A No.

Q Have you ever invested in real estate before Rio Rancho Estates?

A I don't know what you mean have I invested in real estate.

Q Have you ever owned real estate?

A No.

Q You never have?

A No.

Q I show you Defendant's Exhibit BK for identification and ask on reading at the middle of the page, item number 6, if that refreshes your recollection as to what you may have said on that form.

A What I said was correct but not in the way you asked thequestion, sir.

Q Sometimes I don't ask the right questions.

Mrs. DeWitt, what did you mean when you said you invested in real estate?

A What I did -- what I invested in was a portion of mortgages that other real estate investment companies had where I was a limited partner and they were general partners.

Q Some kind of a mortgage syndication?

A Yes, that's correct.

Q How many times did you do that?

A Oh, for about 25 years.

Q By the way, do you recollect with respect to the last of these mortgage syndications you were in, the approximate rate of interest in which your syndicate invested?

A They usually ran about 10 per cent.

Q That's somewhat more, I take it, than Rio Rancho charged you on your investment in Rio Rancho, isn't that so?

A I got an income of about 10 per cent. They didn't charge me 10 per cent.

Q I see, I understand, but they charged somebody at least 10 per cent, didn't they?

A Well, they charged whoever signed the mortgage.

Q 10 per cent at lease in interest?

A I don't know that.

Q You agree that if you got at least 10 per cent they had to have charged at least 10 per cent on the mortgage interest, isn't that so?

A It would seem so, yes.

Q I take it, by the way, that over the 25 years you have had stocks, some have gone up and some have gone down, isn't that correct?

A That's correct.

Q Every time you bought a stock you hoped it would go up and you could sell it for a profit, isn't that so?

A Yes.

Q It didn't always work out.

A No.

Q You understood that when you bought the stocks?

A Yes.

Q You first bought property at Rio Rancho in December of 1970?

A Yes.

Q You went to that dinner?

A Yes.

Q I take it in the course of managing or helping to manage people's moneys you have to be pretty careful, don't you?

A I am extremely careful.

Q You don't pay bills which shouldn't be paid?

A No.

Q You make sure that you pay a bill only out of a particular account?

A Each of our clients has his own account. There's no problem.

Q You make sure you don't make mistakes on what accounts you pay?

A I am sure, yes.

Q You account to each of your clients every particular month?

A Yes.

Q So that required you to read very closely various bills or documents which you get on behalf of your clients, isn't that so?

A That's true.

Q You would conduct your own business in the same way, wouldn't you?

A You don't always do for yourself what you do for others.

Q You are certainly capable of doing it for yourself what you do for others, isn't that so?

A You try.

Q Don't you try?

A Most of the time I try.

Q I show you Prosecution's Exhibit 168-A. Do you agree this was a contract you signed that evening, isn't that so, that you were at the dinner?

A Yes.

Q You signed it that evening after you were told about the climate and the growth of Rio Rancho, isn't that so? You were told about the climate and the topography and the growth at Rio Rancho, isn't that so, that evening?

A Yes.

Q You saw motion pictures which had the same kind of theme?

A Yes.

Q You were told about the southwest being the best place for the appreciation of real estate?

A Yes.

Q I take it that you were aware that real estate appreciates in other parts of the country, too?

A Yes.

Q At that dinner, as you said on direct examination with Mr. Devorkin, you weren't told anything about particular appreciation at Rio Rancho, isn't that right?

A Yes.

Q Now, when you signed this contract, somebody such as you, Mrs. DeWitt, would have read it before you signed it, am I correct?

A I suppose I read it.

(Continued on next page.)

Q Your sister also signed the same contract, didn't she?

A Yes.

Q Miss Pers?

A Yes.

Q She's a public accountant?

A Yes.

Q I take it you woul say she's a pretty smart lady, too?

A Yes.

Q She wouldn't have signed something without reading it, am I right?

A Yes.

Q Let's look at the contract. You were told about the refund guarantee, were you not?

A Yes.

Q What did you understand that to be?

A I understood that within six months if I went to Rio Rancho and decided I didn't want it, I could get my money back.

Q You were told you had to visit the property before you could get your money back, isn't that right?

A Yes.

Q You never had any misunderstanding about that?

A No.

Q On the same contract, the paragraph immediately below the one we just looked at, can you identify the initials?

A That's my signature.

Q And also your sister's?

A I don't see my sister's.

Q It is a carbon copy.

A I see it, okay.

Q Hers are there, too, then?

A Yes.

Q Both of you initialed it?

A Yes.

Q Do you agree that you initialed the paragraph which said that you received certain property reports and reports filed with the office of Interstate Land Sales Registration?

A Yes, we initialed.

Q When you initialed it, that meant you received those reports, isn't that so?

A I can't argue that point, Mr. Arkin.

Q I don't want any arguments. All I want are some answers.

A Yes, I would assume that I signed it because I did receive them.

Q Somebody such as you and somebody such as Miss Pers, your sister, would have read those reports, isn't that correct?

A No.

Q You considered spending at this particular point $14,775.41, a rather serious transaction.

A Yes.

Q That's as much as you made in a whole year.

A Yes.

Q You managed or helped manage other people's moneys, am I right?

A There's no connection between managing my money and other people's.

Q I am just asking you a question. I am not arguing with you.

A Yes, I realize that.

Q It is a very serious transaction.

A Yes.

Q Isn't it so that you and your sister would have undertaken to have read the offering statement in respect to what you just purchased?

A I can't say that I read it, Mr. Arkin.

Q You invested in mortgage or real estate syndications in New York State, am I correct in that?

A Yes.

Q When you have invested in those, have you [illegible]en prospectuses which were submitted to you before you invested?

A There were many on which I did not see prospectuses.

Q But there were some on which you did?

A Yes.

Q I take it you read those, didn't you?

A Very rarely, Mr. Arkin, because I had confidence in the people with whom I was doing business.

Q You didn't read the particular offering statement, I am talking about the syndications now in which you invested your money?

A No.

Q They were much more complicated I am sure than this particular document, weren't they?

A Yes.

G And also they were more complicated than the property reports and offering statements which you saw, you would agree to that, too, wouldn't you?

A Oh, I can't say that because if I didn't read them, I can't tell you that they were more complicated.

Q When you testified on direct examination with Mr. Devorkin, you said that you recognized the particular reports, isn't that so?

A I don't know. I don't understand the question.

Q Didn't you identify just a bit earlier certain reports which you say you received?

A I don't think so.

Q We will go back to that then.

Now, let's go to the next paragraph.

A Yes.

Q Keep your glasses on just for a few more moments.

A All right.

Q I will hasten the pace.

A All right.

Q Over here, I am referring to the second paragraph from the bottom on the front page of Exhibit 168-A, doesn't that say that you have 48 hours to void the agreement which you signed if you had not received certain reports 48 hours previous to signing it?

A Yes, sir.

Q It is pretty easy to understand, isn't it?

A Yes.

Q It is pretty near where you signed, just a couple of inches above it?

A Yes.

Q You would have seen that when you signed, wouldn't you?

A Yes.

Q Let's take the last paragraph just above your signature in the big, bold, black type. Would you read that, please?

A Yes.

Q Doesn't this say that this agreement sets forth the entire agreement between the parties and that no agent or representative of the seller shall have any authority whatsoever to change or modify this agreement in any manner or to make any other agreement or representation on behalf of the seller and that if Rio Rancho Estates, Inc. signs a copy of this it will be a binding contract, isn't that what it says?

A Yes, it says that.

Q Doesn't that mean that this particular document is what governed the bargain between you and Rio Rancho or you and AMREP, isn't that what it means to you common sensibly?

A May I read it?

Q Yes, ma'am, you sure can.

A I can't tell you what it meant to me seven years ago. Let me see what it means to me today.

(Pause.)

A What it means to me is that by both signatures this becomes a binding contract. Is that what you meant to say?

Q That contains the essential representations made to you when you purchased the property, isn't that so? Isn't that what it means in plain language?

A Yes.

Q On the flip side of this one page document, referring again to 168-A, I address your attention to paragraph 3. Would you kindly read that? Let me hand it to you so you don't have to lean over.

(Pause.)

A What would you like me to do?

Q Just read that paragraph. Have you read it?

A Yes.

Q Were you told at the dinner party which you attended about the exchange privilege?

A We were told that at the dinner party.

Q You were told that if your property didn't have utilities at the time when yyu wished to build on it that you would be able to exchange it into an area which had utilities already in place, isn't that so?

A Yes. There was one thing that was not told.

Q I am not asking you what was not told. I am asking you what was said, ma'am.

A Yes.

Q You were told that?

A That we could exchange the property for other property.

Q In the event -- here, this particular paragraph. Do you remember discussing this or hearing about this at the dinner party, referring to paragraph 3?

A I don't remember discussing this, sir, at all.

Q Did you understand it to be your right in the event that you didn't have utilities in place on your particular lot that you had a right to exchange it into an area which did have utilities?

A I understood it to mean that I could exchange my property entirely into an area where utilities were entirely.

Q So that you didn't understand at the time that you signed this particular agreement and bought this particular property that utilities were in place on your particular property, did you?

A No, I knew they were not.

Q At that dinner party you said that you remember having had your attention directed to pages 10 and 11 of Exhibit 288 "This is My Land," is that correct?

A Sir, I did not say that. What I said is I remembered a map that looked like that.

THE COURT: That's all the witness said, just the map.

THE WITNESS: I didn't say I remembered the other things.

Q Did you remember as you called them throw-aways which had similar representations as do pages 10 and 11 of "This is My Land"?

A I said I didn't remember that booklet at all.

MR. ARKIN: Fine.

Q Your testimony now is that you don't remember that booklet at all?

A I said that before, sir.

MR. ARKIN: Kindly mark these.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibits BL and BM marked for identification.)

Q Sorry you have to keep your glasses on. I show you Defendant's Exhibit BL for identification. Would you kindly look at that and tell me if you are able to recognize that document?

A No, I am not.

Q Let me show you BM for identification. Are you able to recognize that document?

A No, sir.

Q Let me direct your attention to page 3 of BL for identification and ask if you will read the language under subparagraph 5 at thebottom of the page to yourself.

A Yes, sir.

Q Does reading that particular paragraph refresh your recollection that in certain of the literature which you received that evening in December of 1970 that it said specifically that it would be difficult --

MR. DEVORKIN: I object.

THE COURT: That it says what you just read.

Q All right, that it said what you just read.

A I did not read. I have no recollection of seeing that statement at any time.

THE COURT: We will adjourn now. Monday morning at 10:00.

(Whereupon, an adjournment was taken to Monday, November 22, 1976, at 10:00 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Morton Lederman (Resumed)		1912	1917	
Nicholas Thomas Masone	1931	2019	2062	
Elinor DeWitt	2074	2106		

EXHIBIT INDEX

Defendants Howard Friedman and Henry Hoffman	Identification	In Evidence
BG	1915	1917
BJ	2108	
BK	2108	
BL	2125	
BM	2125	

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
BI	2046	2046

Government	Identification	In Evidence
594		1930
792		1964
258		1996
767,768		2014
168-AA	2075	
168-C		2091
168-B		2101
168-E	2102	2104
168-F	2103	2104
168-D		2106

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

November 22, 1976
10:00 A.M.

(Trial Resumed)

(In the robing room)

THE COURT: Yes.

MS. HYNES: Your Honor, the government would like to inquire at this time, your Honor has previously --

THE CLERK: Mr. Hoffinger is not in yet.

MR. FLEMING: We can cover for him, Judge.

MR. ARKIN: We will cover for him.

THE COURT: Put the jury in the box.

MS. HYNES: Your Honor has previously stated that you intend to sit on Friday, the day after Thanksgiving.

The government has been having some difficulty in getting witnesses, some of the witnesses who are coming from out of town with airplane reservations and getting them in and out of the city in time to be able to testify should their testimony go over to Friday.

The difficulty being that obviously they want to be home on Thanksgiving with their family.

We would like to inquire if it is still the intention of the Court to sit on Friday. We are having difficulty getting these out of town witnesses. We have out of town witnesses in town right now scheduled to go. We believe the people that we have in town now will be completed by Wednesday afternoon and they can get home for Thanksgiving.

But to bring in further witnesses who would follow in a logical order we are having difficulty not only with plane reservations but then having to bring them back on a Friday morning in order for them to continue their testimony should they not complete their testimony on Wednesday.

MR. ARKIN: We don't object.

THE COURT: I was going to ask do any of the defendants object?

MR. FLEMING: We do not, your Honor.

THE COURT: We will not sit on Friday.

MR. FLEMING: I think the jury will probably not object, either.

MR. HOFFINGER: I don't think anybody will object.

MS. HYNES: Thank you, your Honor.

MR. DEVORKIN: Your Honor, the second application has to do with cross examination.

It has occurred before, but it occurred on Friday with respect to the use of 3500 material to cross examine government witnesses.

The government would request that defendants follow the Second Circuit's guidelines in United States v. Gardin, 382 Fed. 2d, 601, 1967, wherein the Second Circuit said that if, after the defendants have received 3500 material, "The defendant decides to make use of any of the material for cross examination of the witness, he will be permitted to do so only upon the condition that he state preliminarily to the Court and jury that he is about to question the witness on the basis of a written statement or report which the government has made available to the defendant as required by law. This is to negative any inference that the government has been covering something up and has received compliance with the general rule of evidence and the protection of the witness which requires the laying of a proper foundation for the introduction of past contradictory statements."

We would request whether they use a piece of 3500 material or introduce it in evidence that they make that statement to the Court and the jury.

MR. ARKIN: Your Honor, the Gardin case as I understand it was one where the 3500 material was turned over in the presence of the jury and that was a point on appeal and the Court in saying that was not enough for a reversal commented upon the practice of presenting material, 3500 material to defense counsel in the presence of the jury saying that that practice was not something to be commended.

THE COURT: I will read the case, but my recollection was that there is a Court of Appeals decision around saying that the jury is not supposed to know.

MR. ARKIN: Yes, your Honor.

THE COURT: That the defendants got 3500 material. I will read that case.

MR. DEVORKIN: Gardin says that the practice that the material should not be handed over in the presence of the jury. They go out to set out the rules that the government is entitled to have enforced in the context of 3500 material.

THE COURT: From what you tell me that seems to be in conflict with the prior decision in which they specifically said there should be no turnover and the jury should never know it. I will read both cases.

MR. DEVORKIN: I will give your Honor a copy.

MS. HYNES: One other thing comes to mind. The last time we were in session Mr. Arkin followed a line of cross examination making reference to his associate, Mr. Arisohn, in questioning a witness and your Honor said it did not call in to issue the credibility of Mr. Arisohn because the witness had not answered in the negative.

THE COURT: Right.

MS. HYNES: And all the answers were in agreement with Mr. Arkin's question.

However, what our concern is that should the situation arise where a witness would not agree with Mr. Arkin's question and statement about a conversation, that at that point we would have a situation --

THE COURT: There is that possibility and Mr. Arkin understands that.

If there had been -- his answers were in and you were too late with your objection. He hadn't at that point conflicted with anything that Mr. Arkin had asked.

But if there was -- if Mr. Arisohn would have had to have been removed from the case. You must understand that, Mr. Arkin.

You cannot put your partner or associate's credibility on the line in this when he is here helping you in the trial of the case.

MR. ARKIN: Would your Honor suggest in that situation that I ask whether or not the witness had a conversation with somebody related to the case and not giving a name.

THE COURT: That is perfectly all, right, but you put him there and, frankly, Ms. Hynes' objection was too late.

If she had made it earlier and I assume you know the rule, I would have turned to you and said Airsohn is out of the case now. You should know that. I don't have to -- it is not my job to tell you how to try the case.

MR. ARKIN: There will be a number of statements in this case taken by my firm during the investigation. They were taken generally in front of a CSR, a Certified Shorthand Reporter which obviously takes me or anybody else who took the statement out of the position of putting my credibility against their credibility. I take it there is no problem with that.

THE COURT: Not if you are going to put the shorthand reporter on the stand.

MR. ARKIN: If I do at some point.

THE COURT: That is right.

Even there, I think it would be better not to use Mr. Arisohn's name because you are going to create problems for youself.

If you use Arisohn's name and then bring the shorthand reporter in to testify, you have indirectly brought Arisohn in to say he is defense counsel and he is the fellow that is testifying and that is not right.

MR. ARKIN: We will certainly avoid that, your Honor. It is a little bit like the problem of the government giving somebody immunity on condition they tell the truth.

THE COURT: No, it is not.

MS. HYNES: It is not.

THE COURT: The case here is absolutely clear. The Code of Professional Conduct involved, Mr. Glendon raised that to a faretheewell.

You put your partner in credibility who is sitting next to you at the counsel table, he is out of the lawsuit.

MR. FLEMING: Is your Honor suggesting that the questioning should be along the lines, on a particular date did you say a particular thing.

THE COURT: To someone.

MS. HYNES: Exactly.

THE COURT: Now, he may do that. If he is pushed to show that the witness is lying, he is going to put a certified shorthand reporter on.

If he uses Arisohn to start with and puts the shorthand reporter on, he is in effect putting Arisohn on the stand.

MR. FLEMING: Can I get rid of Sprizzo this way, your Honor?

THE COURT: Granted.

MR. ARKIN: Considering the number of statements taken in this case, your Honor, I think every one of us will be out at one point or another.

THE COURT: Okay.

MR. KAUFMAN: Your HOnor, there is one other matter. Mr. Arkin has had a suphoena served on a witness by the name of George Carruthers, a person who will be testifying from the Albuquerque Planning Department. It is a subpeona dúces tecum requiring him to bring a voluminous amount of material to Court on December 1st.

I would guess that Mr. Arkin served this in a fashion to have him provide material that Mr. Arkin may want to use on cross examination since I don't believe Mr. Arkin is anticipating calling Mr. Carruthers as his own witness on December 1st.

For ther reason I am not sure that the subpoena is proper. In any event, the subpoena is extremely overbroad. I have talked with Mr. Carruthers and he says that to comply with this subpoena would mean transporting a good portion of his office to New York.

THE COURT: Why don't you talk to Mr. Arkin during the recess and see what you cannot work out and then I will pass on that.

All right.

(In open court - jury present)

THE COURT: Good morning.

ELINOR DE WITT, Resumed.

CROSS EXAMINATION CONTINUED

BY MR. ARKIN:

Q Mrs. DeWitt --

MR. ARKIN: May I proceed, your Honor?

THE COURT: Yes.

Q Mrs. DeWitt, you visited your property on February 13, 1971; do you recall that?

A I visited the property. I cannot verify the date.

MR. ARKIN: Mark these.

xxx (Defendant Howard Friedman and Henry Hoffman Exhibits BN and BO marked for identification)

Q I show you Exhibit BN and ask if you are able to identify the signature about two-thirds of the way down on the right-hand side of the page.

A Yes, that is my signature.

Q Do you recall having signed this document?

A Yes.

Q Are you able to identify it?

A Yes.

Q What is it?

A A record of property visitation.

MR. ARKIN: We offer it.

MR. DEVORKIN: No objection.

xxx (Defendant Howard Friedman and Henry Hoffman Exhibit BN received in evidence)

THE COURT: Is that the first time you visited the property, Mrs. DeWitt?

THE WITNESS: Yes, sir.

THE COURT: February 13, 1971, all right. Go ahead.

Q Mrs. DeWitt, do you recall signing the record of property visitation and indicating you were satisfied with your property but you wished to exchange it nonetheless into other pieces of property, do you recall that?

A No, sir.

Q Let me show you the exhibit.

Do you recall the language on Exhibit BN which said "I have inspected my property and I am satisfied however I wish to exchange my homesites for the new homesites I have selected PA number and then some numbers appear right above your signature.

A I obviously signed that, but I was not satisfied with the property and that was my complaint with Mr. Geller.

Q I understand.

Did you read this before you signed it?

A I suppose I must have, but --

Q When you were out at the property you decided that you wanted to exchange the property which you had purchased in New York for other properties, isn't that right?

THE COURT: You mean the purpose of going?

Q No, when you were in Albuquerque --

THE COURT: When she was there.

Q When you were there at Rio Rancho you then determined to change your property, which you had bought in New York, for other property at Rio Rancho, isn't that so?

A That is not quite the sequence, Mr. Arkin.

Q You say you went out to Rio Rancho and you saw your property, didn't you?

A Yes.

Q You had a discussion with Mr. Geller?

A Yes.

Q After you had a discussion with Mr. Geller you exchanged the property which you then had into other property, am I right?

A That is correct.

Q Other property in the same unit?

A Yes.

Q And you had been out to that unit before you exchanged your property into it, hadn't you?

A Yes.

Q You had seen it?

A Yes.

tla

Q By the way, you knew that the unit -- I am speaking now about unit 25 -- did not have utilities implanted at that time, isn't that correct?

A Yes.

Q Do you recall that at the time that you exchanged your property that you got the appreciated price on the property which was exchanged in towards the new property?

A Yes.

Q Do you recall how much in appreciation you got at the time you changed it in?

A It's on the contract, sir. I don't remember the amount.

MR. ARKIN: Mark this.

(Defendants Howard Friedman and Henry Hoffman Exhibit BP marked for identification.)

Q Mrs. DeWitt, I show you BP for identification and ask if you can identify this document.

A Yes.

Q Is this the -- would you tell me what it is?

A An exchange contract.

Q Is this your signature which appears upon it?

A Yes.

Q And that of your sister?

A Yes.

MR. ARKIN: We offer BP, Mr. Devorkin.

MR. DEVORKIN: The original is already in as part of Government's Exhibit 168-B so for the sake of the record --

MR. ARKIN: I will withdraw the offer then, your Honor.

May I have your exhibit, please.

Q I show you what is marked as Government's Exhibit 168-B, towards the middle of the page, left-hand side, you agree, don't you, that you received an appreciation amount of $1335 towards the exchanged in property?

A Yes.

Q And that you also received full credit for the amount you had paid in of $1335?

A Yes.

Q Do you recollect from your own knowledge of how long after you purchased the property in New York, the original property, that you visited Rio Rancho?

A Three months.

Q So in that three-month period you received an appreciation of $1335, am I correct?

A That's what Mr. Geller said it had appreciated by that amount.

Q You received that credit on the contract, didn't you?

A Yes, sir.

Q You also received on that trip a vacation travel allowance of a certain amount, didn't you?

A To be received at the end of the payment of the contract, sir.

Q But you did receive that, though, didn't you?

A Yes.

Q Do you recall being asked about the trip which you took to Albuquerque, don't you, the tour which you took to Albuquerque? Do you recall being asked about that last Friday?

A Yes.

Q Do you recollect how much it was you paid to go out there with your sister?

A I said I thought it was $430.

Q Did you check in New York as to what it would have cost you to go out had you gone on your own and not on the tour?

A No.

Q Do you know that it was cheaper, more economical, to go by way of company tour than to go on your own?

A Well, it is generally cheaper to go on a tour than on your own.

Q Do you know it was cheaper in this particular instance, too, to go on a tour?

A I thought it would be, yes.

Q You said you received first class treatment all the way during the course of this tour, am I correct?

A Absolutely.

Q I take it that you don't object to first class treatment?

A At any time.

Q I show you -- this is BO -- BO for identification, can you identify this?

A Yes, it is a photograph of a group. Now let me see if I am here at Panorama Inn.

Yes, you found me. I didn't find me so fast. Where did you fine me?

Q I am not supposed to testify. I really don't think it would be proper.

A A picture similar to this was taken. I can't find myself on this one. If I could remember what I was wearing I might find it, but I don't. Which, the head turning backwards?

Q The one right above my finger, is that you?

A I have no idea. It doesn't look like me. It is similar to the kind of picture that was taken and I think there is a photograph in my folder that Mr. Devorkin has.

Q Did you bring such a photograph to Mr. Devorkin?

A Yes.

Q But you can't identify this particular photograph as the one taken?

A No, I can't find me on that.

Q Do you recall whether or not on your tour a Mr. Masone, Nicholas Masone, also accompanied the tour? Do you recall that?

A I don't remember the name, no.

Q Let me see if this refreshes your recollection --

A Sir, I have never seen any of these people before and have never seen them again so that the possibility of my identifying anyone is almost negligible.

Q Do you recall the gentleman in the left-hand corner of the photograph to which I just pointed?

A No.

Q By the way, you exchanged in your property, did you not, for the new property in unit 25 after you had the conversation with Mr. Geller about Scarsdale, I take it, am I right?

A I can't verify the sequence at all. I don't know whether -- I am sure it was said, but whether it was before or after, I cannot swear.

Q Do you recall being asked yesterday -- by yesterday I mean on Friday -- by Mr. Devorkin, let me find the page here, the following question and the following answer, page 2106:

"Q Mrs. DeWitt, if you had known that AMREP Corporation had commissioned a report which stated that the growth of Albuquerque was to the northeast and would have no effect on Rio Rancho for 20 years, would you have purchased your property for investment?

"A No."

Do you recall hearing that question and giving that answer?

A Yes.

Q How long did you spend with Mr. Devorkin before you testified?

A I beg your pardon?

Q How long did you spend with Mr. Devorkin before you testified?

A About three hours.

Q When was that?

A The Sunday before I came here.

Q Was that the only time you spent any time with

Mr. Devorkin?

A Yes.

Q Did Mr. Devorkin tell you about any other reports which the company had?

A No, he did not.

Q Did he mention the possibility they might have other reports?

A I don't think so.

Q Do you know the name of the particular report which Mr. Devorkin was referring to when he asked you that question?

A No.

Q Do you know anything about the person who made such a report?

A No.

Q You don't know how reputable they are?

A No.

Q You don't know what kind of competence they have?

A I don't know anything about the report other than --

Q What Mr. Devorkin told you?

A What was questioned or what was asked and what I answered.

Q If I were to tell you that aside from that, that the company had in its possession a report by the federal government, Department of Housing and Urban Development, Federal Housing Administration, who had prepared a study of Albuquerque housing market as of November 1, 1970 said that the most significant building activity outside the centran city of Albuqerque was at Rio Rancho Estates, would that have influenced your judgment as to whether to buy or not?

A I can't answer that honestly, Mr. Arkin. At this point it is a vision of hindsight and I can't possibly give you --

Q Excuse me, Mrs. DeWitt. You answered Mr. Devorkin's question also with the vision of hindsight, did you not?

A No, because an investment that might take 20 years to materialize was a little too long for me. I didn't know whether I could live 20 years.

Q Mrs. DeWitt, the point is -- I will ask you the question again -- you are a lady who has had a lot of experience with investments -- if somebody says one thing, renders one opinion, and somebody else renders another opinion, are you necessarily inclined to take one opinion over the other?

A No --

Q Wouldn't you wish to know whose opinion it was?

A If I have two opposing opinions, I would look into both of them a good deal farther.

Q So that if you had an opinion by one firm or individual, and then you had an opinion by the federal government or an agency of the federal government contrary to that, you wouldn't let one opinion outweigh the other, would you?

MR. DEVORKIN: I object to that characterization.

THE COURT: The objection is sustained.

Q In any event, you would, I take it, weigh very seriously, would you not, Mrs. DeWitt, the opinion of a federal agency that the most significant building activity outside central city Albuquerque was Rio Rancho Estates?

A I would weigh any two opposing opinions.

Q If you had a third opinion in a report commissioned by the company that the growth of Albuquerque logically must be towards Rio Rancho Estates and to the northwest and that development was taking place there at a significant rate, you would also weigh that, too, wouldn't you?

A I would try to weigh whatever information was available to me.

Q I take it you understand that opinions can differ and that you have to weigh the competence and the bias and the interest of anybody who may have such an opinion in making a decision, don't you?

A Yes.

Q And that the fact that somebody renders a negative opinion, and when you place that side by side with a number of positive opinions, that it's not necessarily wrong if you accept the positive opinions and not just negative opinions, am I correct?

MR. DEVORKIN: I object.

THE COURT: Sustained.

MR. ARKIN: I have no other questions.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mrs. DeWitt, did you speak to your boss about your investment in Rio Rancho?

A No.

Q You testified at page 287 that your income at the time that you --

MR. DEVORKIN: Which page?

MR. FLEMING: I am sorry, 2087.

Q That your income at the time you purchased the land was 12 to $13,000, do you recall that?

A Yes.

Q Did that include whatever you were making on your mortgage syndication investments?

A No, it did not.

Q How much were you making at that time on your mortgage syndication investments?

A I had a gross income -- is that what you are asking me more or less?

THE COURT: Yes, I think that's what he is leading up to.

A The gross income for the year was approximately $50,000.

Q 15?

A 50.

THE COURT: Five, o.

Q What stock did you buy 25 years ago?

A I am sorry, I can't answer that. I don't know. I mean I can go back and review a portfolio and I can't tell you what I bought 25 years ago.

Q Putting mortgage syndications aside, during the course of your lifetime when you have invested in the stock market, on balance have you made or lost money on trading in the stock market?

A On balance I have lost.

Q How much?

A I don't know.

Q $10,000?

A I don't know, sir.

Q Have you lost as much in the stock market as you invested in Rio Rancho?

A Yes.

Q More?

A Probably.

THE COURT: Redirect.

XXX REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. DeWitt, I want to understand one thing. You were asked on cross examination, I believe about your exchange privilege. Did I understand right that your testimony on cross examination was that you understood that you could exchange in your entire property, your entire 3.73 acres into a building area?

A Yes.

Q During the dinner party -- withdrawn.

Mr. Arkin asked you about two opposing opinions. Do you recall that questioning?

A Just now, yes.

Q During the dinner party were you given two opposing opinions?

A No.

Q I believe you were asked both by Mr. Fleming and Mr. Arkin about your stocks going up and your stocks goind down. Do you recall that?

A Yes.

Q I take it during the course of the years you invested in the stock market you have had some advice from a broker at times?

A Yes.

Q Do you ever recall a broker telling you that your stock was predestined to go up?

A No, I have had a broker say he expected that it would go up or that he hoped it would go up, but nobody has ever given me a guarantee.

MR. DEVORKIN: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: The government calls Daniel Monaco.

XXX DANIEL MONACO, called as a witness by the government after having been first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

XXX

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Monaco, please try to keep your voice up so I can hear you back here.

How old areyou, Mr. Monaco?

A I am 47 years old.

Q Where do you live?

A At 34 Minuteman Circle, Orangeburgh, New York.

Q Is that in Rockland County?

A That's in Rockland County.

Q What is your educational background?

A My educational background consists of up until two years of high school.

Q Were you in the service at all?

A Yes, I was.

Q When did you get out of the service?

A December of 1949.

(Continued on next page.)

Q Without necessarily specifying your employers, can you just tell us what types of jobs you have had since you left the service?

A I was in the lingerie industry working for ladies companies selling goods to lingerie manufacturers up until 1963, 1964.

Q And in 1963, what happened?

A At that time, for personal reasons, I did leave the industry, and for the next couple of years was not steadily employed.

Q Did you get involved in gambling activities at that time?

A I did briefly.

Q And was that basically bookmaking activities?

A Yes.

Q And were you ever convicted on bookmaking charges?

A Yes, I was.

Q How many times?

A Twice.

Q Do you recall what sentences you received as a result of those convictions?

A Just a fine, suspended sentence.

Q Since then, have you been convicted of any other crime?

A Yes, I have.

Q What crime was that?

A Of this year, two counts of fraud, mail fraud.

Q Did you plead guilty to those counts of mail fraud?

A Yes, I did.

Q And can you tell us what the basis of the fraud charge was?

MR. ARKIN: Objection, if your Honor please. I would ask him to state what he pleaded guilty to. The basis calls for a conclusion and an opinion.

THE COURT: I think he can tell us what the indictment was and he can tell us to what he pleaded guilty to.

Q Mr. Monaco, do you recall whether or not you pleaded guilty to an indictment or an information?

A I pleaded guilty to an indictment of information, right.

Q Do you recall whattheindictment or information charged you with?

A I think, to sum it up, was the fact that in my duties as general manager in requesting refunds --

Q Excuse me. General manager of what?

A Of ATC Realty.

In the requesting of refunds from the AMREP Corporation for customers, I didn't return, keep in my possession a partial amount of that refund.

Q In other words, for Rio Rancho customers who were supposed to get a refund from AMREP, you would get them a partial refund and retain the rest for yourself, is that correct?

MR. FLEMING: I object to that characterization.

THE COURT: Ask him the witness what iw as. He was the one who pleaded. You weren't there.

Q Did this have to do with customers of Rio Rancho land?

A In dealing with customers that were requesting a refund, I negotiated the refund for X amount of dollars and then requested from the company Y amount of dollars and kept the difference between X and Y.

Q And did you do this with anyone else?

A You mean an associate?

Q Yes.

A Leonard Geller.

Q Did you plead guilty in this court house?

A Yes, I did.

Q Have you been sentenced yet?

A No, I have not.

Q In connection with that guilty plea, did you enter into any agreement with the government?

MR. FLEMING: Objection.

THE COURT: Overruled.

A No, I did not.

MR. KAUFMAN: Mark this as Exhibit 1401.

XXX

(Government's Exhibit No. 1401 was marked for identification.)

Q Mr. Monaco, I show you what has been marked as 1401 for identification and ask if you can identify that (handing).

A Yes.

Q Is your signature on there?

A Yes, it is.

Q And can you tell us just basically what that is?

A This was the understanding that took place when I pleaded guilty to the two counts of fraud.

Q So when you just testified a moment ago that you did not enter into any agreement, were you mistaken in that?

A Yes, I was.

MR. KAUFMAN: The government offers 1401 for identification.

MR. FLEMING: Objection, your Honor.

THE COURT: Overruled.

XX

(Government's Exhibit No. 1401 marked for identification received in evidence.)

Q Mr. Monaco, do you have any understanding with the government in connection with this trial?

A I was granted immunity to testify in the case against Rio Rancho, AMREP Corporation.

Q Was that conditioned on anything?

A It was conditioned on --

MR. ARKIN: Objection, your Honor, before he answers.

MR. FLEMING: The document is in evidence.

THE COURT: Do you have a document?

MR. KAUFMAN: No, sir. This is with respect to his own case, his guilty plea. I am now asking him about this case.

MR. ARKIN: May we have a side bar?

THE COURT: Do you have a document such as you had --

MR. KAUFMAN: No, your Honor.

THE COURT: Come up to the side, bar.

(At the side bar.)

MR. ARKIN: Your Honor, obviously what Mr. Kaufman seeks to elicit is an answer that, "If I tell the truth I'm okay."

Thatseems to me to be wrong at the outset.

MR. FLEMING: Paragraph 4, your Honor.

MR. ARKIN: And also the last paragraph of the second page contain what, in essence, the government at most is entitled to elicit.

THE COURT: You do have an agreement in this on this, paragraph 4.

MR. KAUFMAN: Your Honor, this agreement -- it is not clear from this agreement whether or not it would grant immunity in this case.

THE COURT: It is perfectly clear to me.

MR. KAUFMAN: There was a separate statement made on the record in his grand jury testimony.

THE COURT: Get that. I won't take this statement.

I sustain the objection, but that is good enough to give him immunity in this case.

MR. KAUFMAN: I will read this, then, your Honor. I will ask to read this to the jury now.

THE COURT: All right.

(In open court.)

MR. KAUFMAN: Your Honor, if I may read 1401.

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 1401 in evidence to the jury.)

Q Mr. Monaco, when did you start working for ATC?

A In June of 1970.

Q And how did that come about?

A At that time I was working for Horizon and a friend of mine, along with a friend of mine, Morton Hochberg, and he had suggested that we go to work for Rio Rancho.

He had previously worked for them and the fact that he thought we would be more successful there.

Q And did you apply for a job at ATC?

A Yes, I did.

Q And were you interviewed by anyone?

A I was interviewed by Peter Miller.

Q Who was Peter Miller?

A Peter Miller at that time was the executive vice president of ATC Realty.

Q And how long was that interview?

A To the best of my recollection, approximately an hour.

Q And for what position at ATC were you interviewed for?

A A Sales representative.

Q And were you hired by ATC?

A I would think I was hired at that particular time, but there was -- Mr. Miller had suggested that I that evening attend one of the dinner functions, I think it was in Queens, and if I did like the way the program was presented and felt I could fit in with the company, he would then hire me.

Q Did you attend a dinner party that night?

A Yes, I did.

Q Did you go with anyone else?

A To the best of my recollection, I went with Morton Hochberg and Leonard Geller.

Q Was this the first time you had ever seen an AMREP or ATC sales dinner?

A Yes, it was.

Q What do you remember from that first dinner?

A I do recall that Steve Bondy was the speaker that evening and I did like the program, enjoyed it, it looked like a successful dinner to me, and --

Q Successful in what way?

A There was a sale or two made that evening. And I felt I could fit in with that type of a program.

Q And did you start selling Rio Rancho land right away?

A I then began a training period with a group of other people that were possibly hired at the same time, I don't recall, where I attended training classes every day and dinners every evening.

Q How long wasthis training period?

A Approximately two weeks.

Q And who conducted this training class during the day?

A Peter Miller did.

Q And what was covered during those training classes?

A During the class, all of the documents that were being used at thedinners, property report, offering statement, maps, news prints, product knowledge was covered, selling techniques.

Q When you say product knowledge, what do you mean?

A Meaning the fact sheet that was available about Rio Rancho, the statistics up to date.

Q With respect to the documents you mentioned, were you trained on how to use those documents?

A Well, to be familiar with them and, naturally, how to use them as sales tools.

Q Which of those documents were used as sales tools?

A Well, we had quite a number of them.

I think you could use just about any one in a particular situation.

Maps, This is My Land.

Q How as This is My Land used as a sales tool?

A This is My Land was a booklet that was printed and generally referred to at the dinner during the program in reference to directing the client's attention or customer's, prospective buyer's attention to specific pages. I think they were 7, 8, 9 and 10.

Q I show you Government's Exhibit 388 in evidence, and ask you if you can identify that (handing).

A Yes.

Q Is this the booklet you are referring to?

Can you look in there and verify which pages the customer's attention was directed to?

A 7, 8 and 9.

Q Were the property reports used as a selling tool?

A Property reports -- well, not used as selling tools.

A property report is like a prospectus. It certainly points out all the pertinent information of the offering and also any negative.

I won't say -- we didn't use it in the course of trying to make a sale.

(Continued on next page.)

Q When you were trained in product knowledge of Rio Rancho, did that include what the size was of Rio Rancho?

A I'm sure it was, because it's published in every one of our documents. I think it's 92,000 square acres, or thereabouts.

Q Was Rio Rancho that size when you first came to work for ATC?

A I think it was. Im' almost certain it was.

Q Did your product knowledge training include --

THE COURT: Wait, wait. The witness seems to be in the middle of an answer.

MR. KAUFMAN: I am sorry.

A I think about that time that I did go to work for them, I can recall some conversation about whether it was just -- they had just had acquired some additional land or it was at that time, I don't recall for certain. I'd have to look at the property report from that particular year.

Q Did your product knowledge training include being told how big Albuquerque was in terms of acreage?

A No, it didn't.

Q Did your product knowledge training include a comparison of the land sizes of Albuquerque and Rio Rancho?

MR. ARKIN: Objection, your Honor.

The question seems to suggest that that might be required.

THE COURT: He just asked him whether he was told that.

Objection overruled.

A Would you repeat the question, please?

Q Did your product knowledge training include being told the comparison of the land size between Albuquerqu and Rio Rancho?

A No.

Q What, if anything, were you told during your training period about what the main inducement was to get people to buy Rio Rancho land?

A Well, during our training program, all of our literature and our training was geared toward investment at Rio Rancho.

Q Do you remember any particular -- withdrawn.

Did Peter Miller conduct any of your training sessions?

A Peter Miller conducted, as I recall, all of them.

Q And during the course of your employment, did Peter Miller, on occasion, address the sales force?

A On a monthly basis, he did.

Q Did Peter Miller have any particular way in talking about investment as the main theme for Rio Rancho land?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you recall what, if anything, Peter Miller said with respect to investment with respect to why people bought Rio Rancho land?

MR. FLEMING: Can we fix a time, if your Honor please?

A Are you talking about --

THE COURT: I gather he attended sales meetings monthly.

Is this the same pitch every month?

THE WITNESS: No. He also addressed our dinners. He did appear as a speaker at our dinners.

THE COURT: You mean at a dinner at which customers were present?

THE WITNESS: Yes.

Q Mr. Monaco, I am talking about either your training sessions or the meetings of the sales force.

A In our training sessions, his -- in his coverage and in his techniques of how to present the product and how to sell it, naturally we were appealing to the investment of Rio Rancho to people at that time.

He did appear at a number of dinners that I attended, as I say, our regular dinner program where he did mention in so many words, "You are appealing to making money, people making money."

That was part of his presentation. And it did carry over to some of the training, as I recall.

You are appealing to --

Q Do you recall what words he used?

A On occasion, I have known him to use the words appealing -- you shouldn't be ashamed to make money, it is very normal. Really, what we are appealing to people sometimes could be the greed in people.

Q After your training period, did you begin to sell Rio Rancho land?

A Yes, I did.

Q Until when did you sell Rio Rancho land at dinner parties?

A I think it was June 1970 to -- I think it was June 1971. I'm not certain of exactly when. I think that was the time.

Q Approximately how many dinners did you attend as a salesman?

THE COURT: You mean up to that date?

MR. KAUFMAN: Yes.

Q During that approximately one year time.

A Approximately 250 dinners, I would say. 200, 250, because I did travel to Albuquerque a few days a week, so I would say that's a fair guess.

Q I show you Government's Exhibit 256, and I ask if you can identify that (handing).

A Yes.

Q Can you tell us what that is.

A This or something very similar to it was a document we used at our dinner party. When our guests were introduced to the representatives, meaning myself, after getting familiar with them slightly, we would have them fill out this document.

Q This is the confidential survey, is that right?

A It's the confidential survey, so labeled.

Q By the way, were you called a salesman or did you have some other title?

A A land consultant. A consultant.

Q Excuse me.

A I think the term consultant was used.

Q Mr. Monaco, I believe you mentioned that pages

7, 8 and 9 of This Is My Land were brought to the customers' attention at the dinner parties, is that right?

A Yes.

Q At what point during the dinner party did that occur, if you recall?

A That was after the showing of our first film at the dinner party and just prior to having dinner.

The speaker would, in so many words, tell the people that dinner was just about to be served and just prior to dinner I would like to call your attention to some of the documents, and would in particular, that a representative will be giving to you, This Is My Land, and I would direct your attention to pages 7, 8 and 9 which will show you what current land values are in Albuquerque, something to that effect.

Q Was that in reference to the examples of other land transactions that appear on page 9 of This Is My Land?

A Well, we would then hand the book to the custome opened to page, I think, 7 of if I can recall 7, one of three pages, and direct their attention to -- if I can recall, we would probably direct their attention to page 9 and show them how land values have been consistently on the rise throughout a good portion of years in Albuquerque.

Q Do you know where those parcels of land were in relation to Rio Rancho?

A No, I don't.

Q At the dinner party, was there talk of the growth of Albuquerque?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Let me see counsel at the bench.

(At the side bar)

THE COURT: I thought I had indicated on Friday I wouldn't take any more testimony on these dinner presentations.

MR. KAUFMAN: Your Honor, I have been --

THE COURT: You have established through five witnesses so far and I am not going through it any more.

MR. KAUFMAN: I have been cutting back.

THE COURT: You didn't. This question is right down the line. Now, stop it.

Unless you bring something new out that has not been testified to before, I want no more testimony on dinner party presentations. You have had five major witnesses on the stand testifying to them and that's enough.

(In open court)

MR. KAUFMAN: Your Honor, there are just one or two matters that I think I have to cover.

THE COURT: Go ahead.

CONTINUED DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Monaco, are you familiar with the practice of calling holds at the dinner presentations?

A Yes.

MR. ARKIN: Objection.

THE COURT: That has been done to a fare-thee-well.

Objection sustained.

MR. KAUFMAN: If I may just ask one question, your Honor --

THE COURT: Go ahead.

Q Before the dinner party got underway, did the sales people meet among themselves.

A Well, on some of the teams, the team I originally started with was ATC, Morton Hochberg was the manager, he had a practice of having a meeting prior to the dinner.

Q At those meetings, were there ever any conversations in connection with what the sales people would do at the time when holds were to be called?

A During the meeting, at times we would look at our allocation sheet for the evening and among some of us we would determine which piece of property we would be calling a hold on that evening so as to avoid some confusion or possibility of two people having a hold on the same piece of property.

Q This is before your customers ever entered the restaurant, is that correct?

A Prior to the dinner.

Q Are you familiar with the practice of sales people announcing over the microphone that a sale had been made and that a certain item should be deleted?

A Yes.

Q Were those announcements always accurate?

A No, they were not.

Q Did you engage in announcing inaccurate sales?

A Well, at the end of the evening, during the course of the close, if you didn't make a sale and there were still some consultants working in the room and you escorted your people to the door, as team work, and it was customary, that you would delete a piece of property from the front of the room.

Q This is for a sale that had not been made, is that right?

A Yes.

Q Were you trained in that technique?

A We considered it good teamwork on our team.

THE COURT: That isn't the question.

Q Were you trained in that technique?

THE COURT: Were you told to do it, is what he is trying to find out.

A I -- yes, I can recall. Yes.

THE COURT: Who told you?

THE WITNESS: It could have been Peter Miller, Morty Hochberg, it could have been Leonard Geller.

MR. FLEMING: I move to strike it, your Honor.

THE COURT: Sustained. Strike it.

Q Mr. Monaco, did you have another job with ATC besides land consultant?

A Shortly after starting to work for ATC I had participated in a number of tours with Mr. Peter Miller and clients going down to Albuquerque. In October of 1970 he had asked me if I would --

Q Who asked you?

A Mr. Miller, if I would like to take the tours to Albuquerque. I told him I would attempt to -- I would like to give it a try, an effort.

He then appointed me with a title tour director for ATC Realty in October or November of 1970 and up until, I guess, June of 1971 I did in conjunction with my duties as land consultant also once a month take the tours from ATC Realty to Albuquerque.

Q What happened in June of 1971?

A In June of 1971 I was appointed tour director for ATC in the Nassau area and New Jersey and no longer attended the regular sales dinners.

Q Did you take on another assignment at that time as well?

A I did. I was appointed manager of a team of individuals, sort of a VIP program, an in-office program.

Q What was the VIP program?

A The consultant's clients were invited up to the office and either an attempt was made to sell them additional land or transfer them to holdings of a larger piece of property.

Q This was just designed for people who already owned land at Rio Rancho, is that right?

A This was a program designed for people who had owned land and we also tried -- we weren't able to, but have people up to the office that had visited Rio Rancho, people that were out of cancellation, so to speak.

Q When you say people out of cancellation, what do you mean?

A Their six month refund privilege had been exhausted.

Q Where was the VIP presentation conducted?

A We were still at 16 West 61st Street at that time. Presentations were made by the individual sales person in a room, an office of some sort. We ordered some food up, some refreshments and the presentation was conducted by the sales person.

Q How long did you remain as tour director for the ATC area, I believe you said it was?

A Of the New York area -- New York, New Jersey area. Until -- I assumed duties as general manager the end of March 1973.

Q So what you are saying is you were tour director until March of '73?

A Through March of '73, March or April.

Q What were these tours?

A Well, the tours were the visiting of the property by people who had purchased property within the last six months, but, of course, people who owned property for terms longer than that also participated in the tours.

These were tours made up of people from the entire New York area.

Q How long were these tours?

A They did vary. At the beginning they were Wednesday through Sunday and then for a great period of the time they were run Thursday through Sunday.

Q What was the purpose of these tours?

A The purpose of the tour was to have people visit Rio Rancho, to solidify them and upgrade,sell them additional property, if possible.

Q Who bore the expense of the trip to Albuquerque?

A The individual land owners paid their own fee. It was a set fee anywhere from $435 at the beginning, to, I think $695 per couple just recently.

Q How many tours did you go on?

A I would approximate around fifty tours.

Q Fifty?

A I think that would be a fair statement, yes.

Q Did you receive any training to be tour director?

A Well, the training to be tour director -- just accompanying Mr. Miller on a couple of tours and then sort of setting my own program, I guess.

Q What preparations existed for a tour once you became tour director?

A Well, I did organize, make preparations as far as the land accommodations down there, the travel accommodations from here. I did also institute some programs so we would get to know the property owners a little better prior to leaving for Albuquerque and the fact that --

Q What did you do in that regard?

A We arranged a pre-flight program, a pre-flight party.

Q When did the pre-flight party take place?

A Which took place a week prior to departure where we invited people that were to participate in the tours up to the office and I, along with whatever consultants were going on the tour, would then have an opportunity to meet the people, introduce them to each other, we would get to know them, so that it would really create a feeling of some sort of relationship prior to their departure for Albuquerque.

Q Was that the only purpose in getting to know these people a week ahead of time?

A Well, I personally felt it certainly did help us in getting to understand what people had in mind as far as what they wanted to accomplish while they were in Albuquerque. It was very helpful.

Prior to my taking over the tours we didn't have such a program and it did prove that the more you did know about the people, the better chance we did have of solidifying them.

Q Were people evaluated in any fashion?

A Consultants did submit a resume on the people that were participating in the tour meaning a lot of information that, the type of occupation, the size of their family, whether they owned a home, their reasons for visiting there, whether it was relocation or retirement at some future date, or if there was a problem, if the person was going down and had expressed that maybe his desire was to cancel, a lot of pertinent information that we found very helpful in, yes, evaluating people personally rather than just reading it from a newspaper or from a paper.

Q Let's discuss a Thursday to Sunday tour.

About what time would the plane be scheduled to leave from New York?

A We generally scheduled all of our departures about 11:00 o'clock on Thursday. We would ask people to arrive at the airport between 9:30 and 10:00. We did have a room set aside at the airport where not only the people but the consultants who had originally put the people into the program would arrive at and we would have coffee and cake.

We had time to mingle and be introduced by the individual consultants to the people. We boarded the plane at 11:00 o'clock --

Q Let me just stop you for a minute, Mr. Monaco.

A Yes.

Q You said the salesman who sold the customer the land was supposed to be at the airport, is that correct?

A Well, it wasn't required, but we did as much as insist. We wanted to have them there so that there would be some sort of an introduction to the people that would be going on tour along with the land owners, meaning myself and the various consultants.

Q How many consultants from New York would actually go along on the tour?

A Well, it would depend on the size of the tour, but we generally took one consultant for each bus plus if we had some new consultants working for the firm, and had room on the plane, we would send down some additional people so that they could have a look at Rio Rancho.

Q Were these regularly scheduled flights or chartered flights?

A They were regularly scheduled charter flights is what they were.

THE COURT: Wait a second.

THE WITNESS: Okay .

THE COURT: What is a regularly scheduled charter flight?

THE WITNESS: We did contract, negotiate contracts with the airline for X amount of planes during the course of a year on specified days.

THE COURT: But they were regularly --

THE WITNESS: They were charter flights.

THE COURT: Or you just took a number of seats on a scheduled plane?

THE WITNESS: Initially the plane was charter flights.

Q Were there any non-Rio Rancho property owners on the flight?

A No. Let me just inject something in here because up until February of 1971 they were not charter flights so that was on a commercial flight.

From February through -- I don't recall when we had our last charter flight, they were our charter flights. After that back to commercial flights.

Q What time did you usually land in Albuquerque?

A There is a two hour time difference, we generally landed about 1:30 Albuquerque time.

Q Did your flights fly over Rio Rancho when you approached Albuquerque on occasion?

A At times they did.

Q Was there ever any announcement on board the plane that was happening?

A There was one particular flight that I recall coming down over from Sante Fe the pilot did mention the fact that if you looked out the right side of the plane, you would be seeing Rio Rancho. We would be flying over Rio Rancho.

Q Did you do anything after that happened?

A On subsequent flights I did mention to the stewardess to tell the pilot that if he were taking that approach, it wouldn't be necessary to announce -- I would prefer he didn't announce that we were flying over Rio Rancho.

Q Why was that?

MR. FLEMING: Object to that.

THE COURT: Overruled.

A Well, I did feel that the first look at Rio Rancho should not be one from five or ten thousand feet up looking at a lot of land and scarred roads or whatever description you want to use for it.

Q What does Rio Rancho look like from the air?

MR. ARKIN: Your Honor, objection.

THE COURT: Overruled.

A From the air it looks just like any other place.

THE COURT: Overruled.

MR. ARKIN: I am sorry, I didn't hear you.

A Rio Rancho from the air would look like maybe at an altitude of 5,000 feet look like a lot of roads and blocks with very little on it.

Q What happened after you landed in Albuquerque?

A We had our tour department from Rio Rancho meet us at the airport. It generally consisted of four buses, bus drivers, tour guides and a few people from the tour department.

We then would be driven or would drive the land owners to the hotel that we would be staying at for the three or four days.

Q What hotels did you stay at?

A We stayed at a good number of them, but I think our longest length of stay was at the Holiday Inn in Albuquerque, where we probably stayed for about a year.

Q Did you ever stay at the Panorama Inn?

A Oh, yes, on many occasions.

Q What determined which hotel you stayed at?

A Usually the size of the group. Panorama could not accommodate the large groups that we were bringing down when we started our charter program so, therefore, we were staying in the Albuquerque area and did stay at a few other hotels until we did find the Holiday Inn to be most suitable.

Q On Thursday what happened after the people were taken to their hotel?

A Do you want the entire Thursday?

Q Yes.

A The drove to the motel, we probably arrived there about 2:00.

The people then were given their room keys and they freshened up, came down, we had lunch planned which lasted anywhere until 3 or 3:30.

At that time we did have -- it was pretty much free time for people from 3:30 to our first departure. We didn't schedule anything for that afternoon.

I am trying to recall, sir. There were people that did have interests in employment. We did have our employment counselor meet us there at the motel.

The first scheduled activity that we had was generally around 6 or 6:30.

Q Who was your employment counselor?

A Guideline Employment at that time.

Q Do you remember who ran Guideline Employment?

A Coleen Josephs.

Q Was she on retainer by AMREP or ATC?

A Initially she was an independent employment agency, but I learned at a later date that she had been retained by Rio Rancho. Exactly when I don't know.

Q What was scheduled at 6:00 or 6:30 Thursday evening?

A Either we would go to the Bond Theatre for dinner and theatre or to the Stadium Club where we would have an evening of dinner and dancing.

The evening would end about 9:30, 10, 10:30. The people would be back at the motel and, of course, I assume would go to sleep.

Q Did you do anything after the people were returned to the motel?

A That particular evening, the consultants met, maybe had a drink or some conversation about individuals, discuss some of them lightly. I don't think there was too much we could learn in that first day.

We tried to stay away from any talk about business. We were just establishing what you would refer to as rapport.

Q Friday morning, what happened Friday morning?

A Friday morning we had -- incidentally, the people also had the schedule of what would take place for the four days.

Friday morning we had after breakfast the buses left the motel at approximately 9, 9:30. We did tour Albuquerque and the surrounding area, the vicinity.

After that drive up to the country club for lunch.

Q Che country club where?

A At Rio Rancho.

Q About what time was that?

A They generally arrived about 12:30. 12:30 to 1:30 was lunch. Would you like me to repeat it?

Q Yes.

A From 12:30 to 1:30 we had lunch at the country club.

At 1:30 the tour then did visit throughout Rio Rancho, condominiums, housing, shopping center, industrial park.

Q When you say throughout Rio Rancho, do you mean the total acreage there or just the developed portion?

A The developed area is what I am referring to.

THE COURT: We will have a short recess.

(Recess.)

(In open court; jury present.)

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

BY MR. KAUFMAN:

Q Mr. Monaco, I believe when we took the recess you were testifying about Friday afternoon, the people who were touring the developed portion of Rio Rancho, is that correct?

A Yes.

Q What was next on the schedule after that?

A We completed the tour. The people were returned to the motel approximately between 4:30 and 5:00.

We did meet the consultants, the tour guides and myself, and discussed again the people on the tour, evaluating our situation with them. If we had any problem, people that maybe didn't enjoy their visit to Rio Rancho, so this way we would have an opportunity to sit down and talk with them.

The next scheduled event for the people was at 7:00, which was a cocktail party from 7 to 8 and one at which we did invite residents of Rio Rancho, residents of Albuquerque, people who were from the New York area and certainly were happy in their surroundings today.

We generally invited five or six couples to that party and between 7 and 8 we did introduce them around and at 8:00 we did retire to a banquet room, which had been set up with tables of 10, and have a dinner and music and prior to coffee and dessert we did make or I did get up and make a presentation dealing with the tours and did make the people honorary citizens of Albuquerque. Introduced a few of the residents --

Q You made them honorary citizens of Albuquerque or Rio Rancho?

A I am sorry, Rio Rancho, and introduced a few of the residents that would then get up and say a few words.

Peter Miller or Len Geller, whoever was there, would also say a few words.

Q What would they say to the best of your recollection?

A What would they say?

Q Yes.

A They talked somewhat about the company and the growth of the company, Albuquerque and Rio Rancho.

Q What about Albuquerque and Rio Rancho?

A I am trying to quote somebody and I just need a little time --

Q You don't have to quote them, Mr. Monaco. In substance, what was said?

A The fact that we were bringing people from all over the country into the Albuquerque area and at one time we did depend on Albuquerque for the growth but certainly in the exposure that we were giving Rio Rancho we no longer were depending upon the growth of Albuquerque as far as the growth of Rio Rancho.

Really nothing ever was said that would come out the same way twice because it was that kind of an evening. We didn't talk business. Mor or less giving the people a feel for -- I guess the residents did more talking than we did at that particular thing.

Q What happened after that dinner?

A After the dinner, which ended about 10:30, 11:00, after the people would retire, we then, the consultants, tour guides and myself whoever was participating in the tour as far as staff, would meet, evaluate our people again.

Q Why were you evaluating them at this time?

A Well, tomorrow -- meaning Saturday -- was the day we would be going to see theproperty at Rio Rancho and we certainly wanted to know as best as we could just how people -- what their opinions were, what their feelings were, what their intentions were.

During the course of that evening -- I think I did leave out one meeting, we had another meeting after we had brought them back from Rio Rancho so if we had people that were slightly disappointed or disappointed, we had an opportunity to talk to them or we had a resident speak with them to find out what was on peoples' minds, actually, and certainly tried to persuade them to keep their holdings.

The purpose of the meeting was also to certainly get ready for what we considered the first group of people going out to the property.

Q How would you get ready for the first group of people to go to the property?

A Well, in evaluating the people on the tour, try to send out what we considered our best prospects of buying additional property.

Q What's what the Friday night meeting was about between you and the staff, is that correct?

A To sort of set up a rotation for the people to visit their property.

Q What happened Saturday morning?

A Saturday morning we scheduled breakfast from 7 to 8. The staff generally had breakfast about 6:30.

At that time I would present to them a list of the rotation that the people would be seeing their property.

Q When you say rotation, how many different groups were set up to see the property?

A Well, it was generally we had anywhere between 10 and 12 land consultants that would be showing the people the property, so it was generally three or four groups that would be going out or doing things individually until they got to see the property. Generally 10 units at a time or 12 units would be seeing their property.

Q With respect to an individual unit now, say 10 customers --

A A husband and wife.

Q Right.

A One buying unit.

Q Did the people within that unit see their property together or did they go out to the property individually?

A No, everyone saw their property individually.

Q What criteria did you use in setting up this list of the order of people seeing their property?

A Well, from all the information we had gathered and evaluating which would be our best prospects to buy additional property and so on down the line, from the first 12 to which would be the fourth group.

Q Why did you want your best prospects to be the first ones out to the property?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Well, we would send out 12 best prospects out to see the property naturally in the hope that they would be buying additional land. It would create an atmosphere of enthusiasm, we felt, for the rest of the group by having the positive people go out first.

Q What did you and your staff do after you finished breakfast?

A At that time I did go to the property office, which was probably 45 minutes before the rest of the group arrived. I did meet with the land consultants that would be taking the people out to visit their property.

Q These are the local land consultants, is that right?

A Consultants that were based at Rio Rancho.

I did give them what was then our opinion of each particular unit, a rundown on the people, and also what our thoughts were as far as if there was a possibility of selling them additional land.

Q How were these local consultants paid?

A To the best of my knowledge on solidification and upgrade.

Q Commission basis?

A To the best of my knowledge, that's how I assume they were paid on solidification and additional purchase.

Q About what time did the people arrive at the property office?

A The people generally arrived around 8:00 or was it 8:30, I am a little vague right now. 8:00 they should have been at the property office.

Q What happened once they arrived?

A On arriving at the property office they were all escorted to one room that we had set up, sort of auditorium style, and when they all were there we would then give them a presentation of which I was the first speaker.

Q Can you relate for us as best as you can what it is you recollect you said to them at that time?

A I greeted them "good morning." I did tell them there were a few things I would like to point out to them before turning them over to our people here at Rio Rancho.

I made them aware that in order to handle a large group such as this that their papers were taken and placed face down on a table and they were drawn and just as someone would be first, naturally someone would be last, and I wanted to assure each and every one of them that as much time as was needed to take care of their personal business would be allowed to them.

(Continued on next page.)

Q Were you telling them that their names were being drawn at random as to when they were going to go out to the property when you referred to their papers being put face down?

A Well, I would say intimating that, yes.

Q Was that accurate?

A So that -- was it -- no, it wasn't, because we already predetermined the first order.

I did say that so that -- I know when you take a large group of people out, you are talking about some seeing their property at 9:00 in the morning and some seeing their property at 4:00 in the afternoon so it wouldn't look like there was any favoritism so far as selecting the names.

Q What else did you say?

A I told them that each of them would be going out individually because some people were under the impression that they were going to get back on the bus and go out to see their property.

I did also point out to them, and I think I can -- that before turning them over, there were, let's see, a few things I would like to point out to them.

I did say to them that while you are driving out to see your property, it may appear to you that you are going out on a long ride, and that is true. You will be going out on what may seem to you to be a long ride.

However, you must realize that Rio Rancho in size is as large as the City of Albuquerque itself, and where you are sitting, right here in this room, this is the entrance to Rio Rancho Estates, that you will be traveling more towards the center of this new city that we are building here and new units and areas that will eventually become self-contained areas just as you see here.

Q Why did you tell them -- excuse me.

A That's all.

Q Mr. Monoco, why did you tell them they would be going on a long ride?

MR. FLEMING: I object to that, your Honor.

THE COURT: Sustained.

Q You told them that they should be aware that Rio Rancho was as large as the city of Albuquerque, is that correct?

A I did mention that, yes.

Q Are you aware that Rio Rancho Estates was almost twice the size of Albuquerque?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Continue on with what you told the people at the property office?

A I think I was at the point where the areas eventually would be self-contained areas just as you see here with their own homes, shops, houses of worship, swim clubs, community centers.

I think I ended it there.

And I said, for those of you, for the benefit of those of you who are visiting with us for the first time, I would briefly like to review the tremendous progress that has taken place here at Rio Rancho.

If you had visited with us -- it chnaged from time to time, depending upon what year we were talking about -- prior to 1970, just about anything that you see north of the Panorama Inn was not here. Our Corrales Heights area, which you visited, our beautiful homes, Natural Section Association, Professional Plaza, shopping center, golf club, country club where you had lunch yesterday, none of this was here.

In fact,people for just the everyday necessities used to have to travel to the city of Albuquerque for everyday shopping, now we had our own shopping plaza.

I know you had an opportunity to see our beautiful country club community springing around the fairways. In fact, I did at that point make reference to just recently a third of an acre residential lot sold for in the neighborhood of $10,000, just to give you an idea of land values in and around our golf club area.

Our industrial park was hardly anything to speak of, where presently I know our company is negotiating with companies that are very anxious to relocate here to Rio Rancho.

And I said, when I talk about progress, tremendous progress, it really is fascinating progress that we have accomplished here at Rio Rancho. And I must tell you that you are most fortunate to be here at this time, because in past years, and as recently as a year or two ago, when we brought our people out here to Rio Rancho and we sold them additional land, and they asked the question most often, and very logically, when will I be able to realize a profit from my land ownership at Rio Rancho, or at one time it was when will I be able to realize a profit from my investment here at Rio Rancho, and our answer, in all honesty, had to be "I don't know," because as long as we ourselves are selling land at Rio Rancho, there cannot be an effective resale market for our investors.

And I say you are most fortunate because at this time we are reaching the so-called end of the trail, the end of the road as far as available property at Rio Rancho, and I can assure you that we will be here to assist and advise you so that you can realize the full potential of your land ownership at Rio Rancho.

Then if there was Peter Miller or Leonard Geller there, I used to introduce them at that time with, there have been some very important developments that have taken place here in the past few months and I woul feel it is appropriate to introduce Mr. Peter Miller or Mr. Leonard Geller, who has played a major role in the growth of Rio Rancho, and I would introduce them.

Q If they weren't on that tour, would you continue speaking?

A Yes. If I was alone, I would continue to speak about at that time the fact that -- I would speak about the developments that had taken place.

There have been some major developments here at Rio Rancho which I want to make sure you are aware of.

I know land ownership, I know many of you own homes or land somewhere back home in the New York area and there is one word that really is a dirty word in the real estate business or one word that is attached to it, and that's assessment.

Now, over here at Rio Rancho, the improvements that we have made, not one resident has been assessed or taxed any share of it, or something to that effect.

When there is an improvement made in the community where you live, whether it is the building of a school or the installing or the digging of a new sewer system, each of you are proportionately assessed your share.

Here at Rio Rancho, the improvements that we have made, whether it has been the recreational facilities, the donation of the land for this school to the city of Albuquerque, the building of the school, the community center, all of these improvements were made and not one of our residents or property owners has been assessed for it.

I would talk about at one time the Albuquerque Airport was named an international airport or was designated an international airport.

I did tell them that certainly that would affect the growth of the Albuquerque area, and the fact that it certainly would be bringing new industry into the area, new dollar flow, new tourists, which there already was a tremendous industry.

We did mention -- I did mention, if I was talking, the fact that while the country presently was in the throws of an economic depression where housing starts certainly had diminished throughout the country, here at Rio Rancho we were building at a faster pace than the previous year, or something to that effect.

I mentioned the fact that the company had been accepted and was trading its stock on the New York Stock Exchange at that time that it did happen.

I did mention that it was a pre-planned community.

It was -- then maybe something, some current event that had taken place in relation to the Albuquerque area.

Q You mentioned something about housing starts increasing at Rio Rancho.

Did you know what the f5igures were on the number of housing starts on a yearly basis at Rio Rancho?

A I can't accurately say yes.

I did know every time I went down there I used to certainly visit housing. I knew exactly how many houses were built, were under construction.

As far as -- because I did mention that as part of my opening presentation when I used to say you visited Corrales Heights.

But as far as knowing how many for the year, I cannot -- it's hard to answer that question with a number.

Q Were you aware of any projections the company made as to future housing starts at Rio Rancho?

A Projections were made to me, but I think it was more in terms of dollars and I could be wrong if I say the figure, and I think it was a $10 million figure, but I'm not -- I can't say that I'm accurate in giving tha answer.

Q Were you aware of any projections the company made as to how long it would take to fully develop the entire Rio Rancho Estates?

A I never heard any projections on that.

Q Was anything said to the people in terms of land at the property that had been picked out for them on that day?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: I don't understand that.

MR. FLEMING: That was my objection.

THE COURT: Reframe your question.

Q Mr. Monaco, was anything else said to the people toward the end of your presentation to them?

A Yes.

After completing that particular portion, it was then brought to the attention, and it was pretty much said the same way, when I said it, Leonard or Peter, the fact that while you people were visiting or siteseeing around

Albuquerque and Rio Rancho, myself and Mr. Radcliff or Mr. -- I don't remember the other property owner's name, the property manager's name -- we were out selecting and setting aside parcels of land for this particular tour.

I would like you to know that we have set aside certainly what we feel are particularly -- we have set aside parcels of land for your inspection, land that is not and will not be available to you back home in New York. This has been set aside especially for this tour.

It is not important whether you buy it or not, but it is important to us that you see it, so make sure that when you are out with your consultant, you have Mr. Egan or Mr. So and So show you the land that we have set aside for you.

Q Had you physically picked out the land to be reserved for these people the day before, as you said?

A No.

Q Were these parcels of land available in New York?

A No, they were not.

Q Why not?

A I assume because they weren't registered in New York.

MR. FLEMING: I move to strike that, your Honor.

THE COURT: Sustained.

Strike the answer.

Q Was this land any different than the land that was available in New York?

A This land was not registered in New York.

Q As to its physical characteristics, was this land any different than the land that was available in New York?

A I would think not.

Q I'm sorry?

A I wouldn't think so.

Q You would not think so?

A I would think it was the same characteristics as the land that was registered in New York.

Q What type of land was available to the people on these tours?

A Undeveloped land.

MR. FLEMING: Your Honor, I have no objection if the witness understands that question.

THE COURT: He has answered it.

MR. FLEMING: Fine.

A Undeveloped land.

Q Was it all residential?

A Yes.

Q Was there any other type of land available?

A On a rare occasion there were sometimes a commercial lot or so.

On one particular tour, there was a block of commercial property that was available.

Q Do you recall in what unit?

A In unit 25.

Q Was that block of commercial land sold on that tour?

A I would think not completely, but most of it. Almost all of it.

Q Do you recall --

A I think it was about $80,000 worth of land was sold.

Q To about how many different customers?

A Well, it was $3500 a lot. It could have been anywhere up to 20 customers, so I don't really recall, 30 customers.

It was probably a smaller tour and it was probably 20 customers.

Q Does any one particular commercial transaction in unit 25 stand out in your memory?

MR. FLEMING: If your Honor please, unless this is a practice or symptomatic, I object to it.

THE COURT: I gather this happened once in 50 tours that this man took and he says maybe.

I sustain the objection.

Q Was commercial land available on other tours besides this one, Mr. Monaco?

A No.

Q Do you recall any one of the approximately 15 or 20 customers who purchased this commercial property during this one tour?

MR. FLEMING: Objection.

THE COURT: Sustained.

(Pause.)

THE WITNESS: Your Honor, may I say something to you, I guess?

THE COURT: No.

(Pause.)

Q Mr. Monaco, after you told the people that you had selected parcels of land for them to be shown, what happened?

A I thanked them for taking the time out to visit Rio Rancho.

I then would introduce David Luner, who was an assistant manager or land consultant down at the property and who -- I told them I would be introducing them to a gentleman who would, in turn, be introducing them to the conslutants that would be taking them out to see their property, and I wuld introduce David Luner.

Q What did David Luner do, if anything?

A David Luner would then give them a presentation, five or ten minutes or so, talking about Rio Rancho and how it was situated geographically as far as the mountains to the east and Spanish land grants and government owned lands to the south and west, talking about the path of growth.

Q What did he say about the path of Albuquerque growth?

A That it as heading sirectly to and through Rio Rancho Estates?

Q What happened after David Luner finished his presentation?

A He would introduce the land consultants, who would take the first group of people out to see their property.

The rest of the people would be boarded back on the buses, some taken to the Panorama Inn, some up to the tram ride in the Siandia Mountains, and that's --

Q Did you ever go out with any customers to see the property?

A No.

Q How long were the customers usually out with their consultants on the property?

A Well, the activity generally started about 9:00, just about 9:00, and the first units back would be in the area of about 10:30; about an hour and a half for that first run.

Q The whole first run would be back by 10:30?

A No, no. I would say the initial returning party would come in approximately 10:30, and from that point on anywhere in the next hour.

(Continued on next page.)

GTjw 1 Monaco - direct

Q And during this time, what would you do?

A I would be at the property office. Among selecting the second run, I would also be just -- I would sometimes have some residents in to see me who I had known to discuss some situation or another or just to say hello.

I would be physically in the property office for that time. I would be listening to the radio and being aware of what activity was taking place on the property and generally be in that area.

Q What radio are you referring to?

A We have a radio that -- the girl would be able to talk to each car in regard to -- if the driver would call in, the land consultant would call in about a particular piece of property, she would be able to tell him availability or the status of it.

Q Did you see the people as they came back off the property?

A Yes, I did.

Q And did you have any dealings with them?

A In some cases, yes.

I always had a chance to talk to them. When you say dealings meaning in a business sense --

Q Yes.

A If I was needed, if the consultant thought I was needed, he felt I could help a situation, yes, I went into the office and discussed it with them.

Q In what type of situation were you needed?

A Well, when it was a sale or someone that wanted to cancel their land, I would be brought into the office.

Q When the first group of people who had seen their property had all come back, what happened after that?

A When the first group -- well, as people complete their business at the office, they were then sent up to the Panorama Inn.

Regardless whether we sold them or not, we did then call, whether I personally was able to do it or Mr. Hettrick , who was one of the managers there, he was a property office manager, I am just recalling his name, we would call the Panorama Inn and the consultant we had up there with the people waiting to go out on property, and tell them of the results of that particular party, and every party after that, meaning if Mrs. Jones completed their business or Mr. JOnes and Mrs. Jones and were on their way up to the Inn, we would call the consultant and tell them that Mr. and Mrs. Jones solidified, they also bought an additional half acre of land in Unit 25.

When the people would get to the Inn, this consultant would then greet the people and ask them how they like it, and they, then, would repeat, naturally, that they solidified and not only did I keep my property, I bought an additional piece of land.

It had a psychological effect, we feel, on the group. That's what you call creating enthusiasm.

Q And I gather thereafter the second run and the third run of people went out to the property?

A And as each consultant became available, another unit was sent out until we did complete the day's business.

Q How late in the day did that usually last?

A Well, it varied, but it was very well organized, I'd like to think, because I have heard other remarks, too.

Generally, the last person would be completed somewhere around 5:00, 5:30 at the latest. Sometimes as early as 4:30, depending on the size of the group.

Q What happened when the last person was back off the property?

A Well, people were being sent back to our motel -- there were three forms of activity there.

When they did at -- the last run, when they did leave the property office, they were sent directly back to the Holiday Inn or whatever motel they were staying at, and our next function, or whatever, for the people was scheduled about 7:30, 8:00 o'clock that evening.

Q What function was that?

A It was generally cocktails, dinner and dancing.

Q What happened on Sunday?

A Sunday, the schedule was for -- assuming everybody had seen their property, which was usually the case, there were always a couple of people who wanted to go back to either purchase some additional property or they had some housing interest, but the group was scheduled to visit either an Indian reservation or one other activity which I can't remember but very similar to that.

They left the motel about 9:30, returned about 12:00 or between 12:00 and 12:30 --

Q This was in the buses?

A Yes, as the group.

We then had scheduled that afternoon -- I forgot our terminology, but we used to have a cookout inviting, again, residents of Rio Rancho, a few residents of Rio Rancho who maybe had some friends on the tour that they wanted to see.

It was a very pleasant afternoon. People left Albuquerque in what I always thought a very nice frame of mind.

THE COURT: What time did they leave, just for the record?

THE WITNESS: The plane generally departed at 4:30, barring unforeseen incidents.

Q Were these tours successful in terms of solidification?

A Yes, they were.

Q Were these tours successful in terms of upgrading and additional land sales?

A Yes, I would think so.

MR. KAUFMAN: Your Honor, at this time the government offers Exhibit 765.

MR. ARKIN: Do you seek to offer this through the witness, Mr. Kaufman?

MR. KAUFMAN: I seek to offer it at this time.

MR. ARKIN: Your Honor, there is no date on the document.

May we hand it up?

THE COURT: Yes.

(Handing to the Court)

THE COURT: Objection sustained.

Q Mr. Monaco, you said you have been to Albuquerque approximately fifty times, is that right?

A Yes, I did.

Q What is the name of the river in Albuquerque?

A The Rio Grande.

Q Can you describe what that river looks like?

A Well, the Rio Grande River in the Albuquerque area is very shallow, muddy body of water.

Q I show you what has been marked as Government Exhibit 379 for identification, and ask you if you can identify that brochure (handing).

A Yes, I can.

Q Just in general, can you tell us what that brochure is?

A The title?

Q No, just --

A It's -- when I first went to work for the company, I remember it as part of our literature --

Q As part of the literature at the dinner parties?

A Yes.

MR. KAUFMAN: The government offers 379 for identification.

MR. ARKIN: We have no objection.

(Government Exhibit No. 379 received in evidence)

xxxx

Q Mr. Monaco, this brochure is entitled "How To Live, Retire and Invest in the Sunny Southwest".

A Yes.

Q I direct your attention to a picture on page 16 with a caption "Along the Rio Grande, A View From the Property."

In your fifty trips to Albuquerque, have you ever seen the Rio Grande River look like that picture?

A No, I have not.

MR. KAUFMAN: If I may just show this to the jury, your Honor.

THE COURT: Yes.

(Mr. Kaufman exhibited Government Exhibit 379 in evidence to the jury)

Q Mr. Monaco, I believe in part of your presentation to the people at the property office you mentioned Spanish land grand land to the west of Albuquerque, is that correct?

A No, I never did. David Luner did, but I --

Q David Luner mentioned that?

A Yes.

Q Where was that land in relation to Rio Rancho, if you know?

A Exactly? No, I don't.

Q In relation --

A I would assume the west mesa.

Q Would that be south of Rio Rancho?

A Yes.

Q Did you ever hear of the Atrisco land grant?

A Yes.

Q And is that the Spanish land grant on the westmesa, as far as you know?

A I really didn't know the location of where the land grants were.

I heard of them, but to pin them down, I'm assuming they were on the west mesa, going back. I would think so, yes.

Q Were you aware that a portion of the Atrisco land grant had been developed?

A No. I was under the impression that the Spanish land grants were -- probably could never be developed because of the fact that there were so many heirs and the litigation involved, they would never be able to sell the rightful owners --

Q Did you ever hear of --

A -- clear title.

Q Did you ever hear of an organization organized to develop the Atrisco land grant called the Westland

Corporation?

A No, I haven't.

Q Had you ever heard of a subdivision on the Atrisco land grant called Snow Vista?

A No.

THE COURT: Do you have much more of this witness?

MR. KAUFMAN: Probably about ten minutes, sir.

THE COURT: Finish with the witness.

Q Were there any gatherings for the people on the tour after they came back from the tour?

THE COURT: Came back where?

Q To New York.

A Yes. We did arrange what we did call a flight reunion dinner for the people returning from Albuquerque.

Q When were these flight reunion dinners held?

A We had experimented with a number of different periods of time from return to the dinner. After a few experiements, we did decide on the following week, the following Sunday of their return.

We would invite them -- I would invite them verbally on the plane and then we would send them an invitation on Monday for them to attend and they would be allowed to bring one or two couples along with them, introduce them to the company, to the program.

Q What went on at these flight reunion dinners?

A The flight reunion dinners were conducted with a different format than our regular dinners.

They normally were much larger. We held them in probably a better class of hotel in New York, accommodating anywhere between two and 250 people.

They were very successful in the fact that we did sell not only -- we used to sell over $100,000 worth of -- we used to average over $100,000 worth of new sales at those particular dinners.

Q At each particular dinner?

A Yes.

Q When you refer to new sales, are you referring to sales to new customers?

A Yes, they would be -- the majority of them would be to the new customer. Some people returning from Albuquerque would purchase some land; probably those that had thought about buying down there but didn't would then purchase it at that dinner.

When I say the program was different, it was not the normal program where the films were shown and then land was sold, it was a very enthusiastic dinner which immediately upon their being a number of people in the room the land sales would then start.

I would say by the time -- I would say --

As a general rule, by the time the dinner was served, we had a substantial amount of sales which were made.

Q You said you became general manager of ATC in March of 1973, is that right?

A I think it's the end of March 1973.

Q And how long did you remain general manager of ATC?

A Until I was terminated in November of 1975.

Q And why were you terminated, sir?

A I was terminated because of my action in those particular fraud cases.

Q Your action --

A My participation -- I was terminated, I'm assuming, on that basis.

Q Because of the actions that led up to your own fraud case, is that right?

MR. ARKIN: Objection to the form of the question, your Honor.

THE COURT: Overruled.

A I am assuming -- I was never told by any official of AMREP that I was terminated, I was terminated by the defense counsel in his office in November of last year, and I'm assuming because of my action against AMREP and its customers.

Q Which of the AMREP corporate officers, if any, attended Rio Rancho sales dinners, to your knowledge?

A When I first was in the employment of the company back in 1970, I think I was with the company two weeks, I had the occasion to be at a dinner that Mr. Howard Friedman -- I think it was a testimonial to Howard Friedman, I'm not certain of the exact title of the dinner. It was a large dinner in the Hotel Biltmore, probably about 500 people were there.

Q Was it a sales dinner?

A We did sell land at that dinner, yes.

Q Do you see Howard Friedman here in court?

MR. ARKIN: We acknowledge he knows Mr. Friedman.

Q Any other corporate officers attend sales dinners, to your knowledge?

A To my knowledge, yes.

I don't recall being at the same dinner, but I know Mr. Daniel Friedman has attended some dinners --

MR. FLEMING: I object to that, your Honor.

THE OCURT: Sustained. He was not there.

Q How do you know that Daniel Friedman attended dinners?

A The managerof that time had told me he was there that evening.

MR. FLEMING: The same objection.

THE COURT: Objection sustained.

MR. FLEMING: Strike the testimony, your Honor.

THE COURT: Strike the testimony.

Q Mr. Monaco, do you own any land at Rio Rancho?

A No, I don't.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: We will adjourn for lunch. Return at 2:15, please.

(Luncheon recess)

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AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

DANIEL MONACO, resumed.

THE COURT: You may proceed.

CROSS EXAMINATION

XX

BY MR. ARKIN:

Q Mr. Monaco, are you a licensed broker of the State of New York, Real Estate Broker?

A Yes, I am.

Q How long have you been a licensed broker?

A Approximately three years.

Q And previous to that you were a licensed real estate salesman, is that correct?

A Yes.

Q How long have you been a licensed real estate salesman?

A I think since the latter part of 1969.

Q That is before you came to AMREP-ATC, isn't that so?

A Yes.

Q You had received your salesman's license while you were working for Horizon Corporation?

A Yes.

Q In order to obtain a salesman's license, did you take a certain examination?

A Yes, I did.

Q You studied for that examination?

A Yes.

Q Do you recall what the subject matter of the examination was?

A Not really, but very general questioning.

Q About real estate?

A I would assume so.

Q What about for the broker's license, did you also take an examination for that?

A Yes, I did.

Q That was a more extensive examination?

A Yes, it was.

Q That had to do with real estate?

A Yes.

Q Did you study for that?

A I also attended school for it.

Q Where was that, sir?

A On Broadway and Eighth Avenue, I think, a three month course for preparation for a broker's examination

Q That was paid for by the corporation, was it not?

A Yes, it was.

Q They encouraged you to get this real estate training, am I correct in that?

A Yes.

Q I show you Defendants Exhibit BE for identification and BD for identification and ask if you are able to identify either of these volumes.

A Yes, I can.

Q Let's take BD first.

What is this?

A The states real estate law for salesmen and brokers.

Q Is this a book which you used to study for your brokers license, sir?

A I am sure I must have referred to a book such as that and other literature also.

Q What about this particular book, sir, can you identify this as one you used to study ?

A I couldn't say yes.

Q What about BE for identification?

A Yes.

Q That one you did use to study?

A Yes.

Q Did you use that to study for your salesmen's or for your broker's license or both?

A For salesman.

MR. ARKIN: We offer BE for identification, Mr. Kaufman.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Mr. Monaco, when did you get your salesman's license?

A I think it was December of '69, but I am not certain as to exactly when.

MR. KAUFMAN: Your Honor, we would object to this on the grounds of the date that appears on this book.

THE COURT: What is the date?

MR. KAUFMAN: 5/74.

THE COURT: Mr. Arkin.

MR. ARKIN: Mr. Kaufman is correct. I will withdraw it at the present time.

BY MR. ARKIN:

Q After you were licensed as a salesman, you say you came to ATC, is that correct?

A I worked briefly for Horizon. Then I did go to work for ATC, yes.

Q Through Morton Hochberg?

A He introduced me to the company.

Q You said that you had two weeks of training before you actually began to sell land, is that so?

A Yes, to the best of my knowledge, yes.

Q That training was conducted by Peter Miller and Leonard Geller?

A I would say Peter Miller.

Q Peter Miller and not Leonard Geller, am I correct?

A Peter Miller, yes.

Q He really was the sole trainer?

A At that time, yes.

When Leonard Geller may have appened in the room from time to time, but Peter Miller did conduct the clinic.

Q Peter Miller was the coach?

A If that is the reference, yes.

Q Part of the training was to obtain product knowledge of Rio Rancho?

A Yes.

Q The product knowledge of Rio Rancho was obtained, I gather, from the offering statement and the property report, am I correct?

Q Those were two documents that were utilized during the training of salesmen?

A Yes.

Q The property report and the offering statements are those statements which contain, in your words, the pertinent facts about Rio Rancho, isn't that so?

A That and also a fact sheet which I was referring to when I said that.

Q You also said that the offering statements and the property reports contained positive as well as negative facts about Rio Rancho, am I correct?

A Yes.

Q You were given those particular statements and returns during your training to familiarize yourself with Rio Rancho?

A Yes.

Q By the way, aside from yourself, you are aware, aren't you, that many of the Rio Rancho salesmen or ATC salesmen visited Rio Rancho, is that so?

A Yes, I stated that.

Q When you nod your head, the machine doesn't pick it up.

A I did state that. In fact, on tour we brought quite a number of newly licensed people down to Rio Rancho.

Q That was a part of company policy?

A Yes.

Q To encourage the salesmen to see the product they were selling?

A Yes.

Q During your testimony on direct you talked a bit about dinner parties, do you remember that?

A Yes.

Q You said that Morton Hochberg, who was your team manager, had the policy or the practice of meeting before dinners with his salesmen, am I correct in that?

A Yes.

Q I take it Mr. Hochberg's practices were his own and not every sales manager did that.

A From my memory, working with different team manager, they did work differently as far as that particular part, yes.

(Defendant Howard Friedman and Henry Hoffman Exhibit BO marked for identification)

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Q Are you able to identify, Mr. Monaco, BQ for identification?

A Yes.

Q What is that?

A That we would refer to as a lit. pack, so to speak. It was presented to a purchaser after dinner with various documents in it.

Q Would you look in this item which you identify as a lit. pack and tell me if it appears complete to you, sir. Take your time.

(Pause)

A May I ask a question?

Q It's my question to you, Mr. Monaco.

A I was referring to a lit. pack as something that we would give a purchaser. This here looks like a salesman's packet for a dinner.

Q The one you would give a customer at a dinner, you mean?

THE COURT: No, he has drawn a distinction between a lit. pack, which he says is a package you give to a purchaser after dinner, and a package that a salesman uses, materials furnished the salesman before the dinner in conjunction with his sales activities.

MR. ARKIN: I am trying to find that out, your Honor.

THE COURT: He has already said there is a difference. Which is the one you have in your hand?

THE WITNESS: This at this point looks more like a salesman's kit.

THE COURT: A salesman's kit as opposed to a lit. pack?

THE WITNESS: Right.

THE COURT: That is an answer to the question. Give it back to him.

MR. ARKIN: This is a salesman's kit.

May I offer it on that basis, your Honor?

THE COURT: You may.

MR. KAUFMAN: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

XXX Q Mr. Monaco, when did you cease being a land consultant?

A In approximately June of 1971.

MR. KAUFMAN: Your HOnor, we would again object to this on the basis of the dates. All the documents contained in here are dated subsequent to --

THE COURT: It is similar to the material you submitted that had subsequent dates, Mr. Kaufman. They are admitted on the basis that the witness has identified as ones he used as a salesman.

MR. KAUFMAN: May I continue the voir dire, your Honor.

THE COURT: Yes.

BY MR. KAUFMAN:

Q Mr. Monaco, when you were a salesman, did you utilize a newspaper reprint similar to this, dated July 29, 1975?

A No, I didn't.

Q Did you utilize a newspaper reprint similar to this, dated July 24, 1974?

A No, I didn't.

Q Did you utilize a newspaper reprint similar to this dated November 15, 1973?

A No, I didn't.

Q Did you have a schedule of prices similar to this? That is dated December 24, 1974.

A It wouldn't be this, no. Similar to this, a price schedule at the present time which would reflect that date.

Q Did you have a map like this?

A It does not look familiar.

Q Did you have a brochure like this?

A If not this one, it may have been something similar to this.

Q Did you have a Rio Rancho Estates status report similar to this despite the date?

A We would have a current Rio Rancho status report.

Q Did you have a brochure like that?

A I don't recall it. We may have, but I don't recall it.

Q Did you have a vacation tour allowance rider?

A If not this document, something very similar.

Q Did you have a confidential survey with those questions in there?

A We had a confidential survey. Whether this is the one that was used here by us, I cannot say.

Q I ask you to compare it with Exhibit 256, which I believe you identified this morning, and comparing them can you determine whether or not the one that was in this envelope --

A This is more familiar to me, yes.

Q And the one that is in the envelope?

A No, this one I don't recall. (Indicating).

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Q Does this look like the form contracts that were used?

A It could be the same contract or very similar to what was actually in use.

Q Did you have a reprint of a newspaper article such as this, dated July 10, 1974?

A No, I didn't.

Q Did you have this one-page document entitled "AMREP Construction Corp. Home Binder"?

A We had literature such as this, yes.

Q Did you have an offering statement, dated May 1, 1974, amended December 24, '74?

A No, but we had an offering statement as of that predate.

Q Did you have a property report dated effective date July 2, 1976?

A No.

MR. KAUFMAN: Your Honor, I divided into two piles the material that Mr. Monaco says he identifies as being the same or similar. We have no objection to that.

We do object to the items in the other pile which he says were not used.

MR. ARKIN: May I continue, your Honor, for just a bit, to see if I can provide a foundation?

THE COURT: I am not letting before this jury all this material which this witness didn't use when he was a salesman and he wasn't a salesman after that.

MR. ARKIN: He was a sales manager.

THE COURT: He was not. He was a tour director. He wasn't at dinners at all, he said. He never went to them.

MR. ARKIN: If your Honor please --

THE COURT: Objection sustained.

BY MR. ARKIN:

Q Mr. Monaco, after you were a tour director, you became general manager of ATC, didn't you?

A Yes, I did.

Q General manager of ATC. You had general supervisory responsibility over ATC salesmen, am I correct in that?

A Yes, which I shared with Mr. Leonard Geller.

Q You shared with Mr. Leonard Geller. Now, as a part of your responsibility you had to issue instructions as to what kind of literature would be used by salesmen?

A Yes, I did.

Q Before on your cross examination just a few moments ago you said there were two types of packages, one given to a customer, a lit pack, and one given to a salesman, is that what took place?

A Actually the lit pack was what was given to a customer. The salesmen's material could have been any one of those particular items.

Q Let's go through them. What was a salesman given, was he given a property report?

A Are you referring to a salesman preparing his evening -- his table for the evening?

Q Yes.

A A property report.

Q An offering statement?

A An offering statement.

Q By the way, what is a property report, would you tell the jury and his Honor?

A A property report lists -- the official listing of it would be anything that pertains to Rio Rancho Estates. An apt description at this moment I can't give you.

Q Do you know if the property report is a document filed with any governmental agency?

A Yes, it is filed with the State Department of the State of New York.

Q Do you know the difference between the offering statement and the property report?

A I am not clear at this moment.

Q Did you know that there was a federal property report?

A Federal is the offering statement.

Q And the state is the property report?

A Correct.

Q I show you two documents, parts of BQ for identification, and ask you to look at these and see if it refresnes your recollection as to which was which?

A Okay. The property report is filed with the federal government.

Q And the offering statement?

A With the State Department.

Q Cf New York State?

A Of New York, yes.

Q Was every salesman before he set out to sell property provided with copies of these reports?

A Yes.

Q Was he also provided with copies of the contract form?

A A contract, yes.

Q Was he also provided with a Rio Rancho fact sheet?

A Yes, he was.

Q What is a Rio Rancho fact sheet?

A A Rio Rancho fact sheet would be an up-to-date rpoert on the development of Rio Rancho.

Q Was he provided with other literature, too?

A Yes, he was.

Q What else was he given?

A There were newspaper reprints. There was a map. There were a booklet of thousands and one facts. There were other reprints which I just can't name at this particular moment.

Q But reprints having to do with Rio Rancho?

A All pertaining to Rio Rancho and Albuquerque.

Q A while ago you mentioned the lit pack or I did. What is a lit pack?

A We called a lit pack a package of literature that we would then give to a buyer after he purchased at a dinner, which included --

Q The offering statement?

A The offering statement.

Q And the property report?

A The property report.

Q A copy of the contract?

A A copy of the contract.

Q And some news articles?

A And some other literature, yes.

Q Having to do with facts about Rio Rancho?

A Yes.

Q Everybody who purchased property got a proper report and an offering statement, did they not?

A Yes, they did.

Q And a copy of the contract?

A Yes.

Q Do you recall how lit packs were set up, do you have any specific recollection as to how they were put together?

A They were usually prepared by a consultant other than the one that was making the sales unless, of course, he had prepared it in advance. Normally at a dinner when I was a salesman, if we had a buyer we would ask one of our teammates to prepare a lit pack for Mr. and Mrs. So and So.

Q Was there a company requirement or a company suggestion, at least --

A A company policy.

Q Excuse me. That the left-hand side of the lit pack as you opened it would have the offering statement right there?

A Not to my knowledge.

Q By the way, do you know whether all literature used and given to customers at sales dinners had NYA numbers on it?

A It was company policy only to have literature that was registered at the dinner, yes.

Q Registered with the state?

A Yes.

Q Do you know what an NYA number means?

A It means it has been submitted to the state and they have accepted it or ruled on it and we are permitted to use it at our dinners. It is registered.

Q With respect to the property reports and the offering statements, were prospective customers also provided with those reports and statements at dinner parties?

A Yes, they were part of our selling tools, if necessary, or they were on the table, yes.

Q Those reports were always on the table, were they not?

A Meaning the property --

Q The offering statements and the property reports.

A Yes.

Q Required by the company to be on the tables?

A Yes.

Q There was one provided each selling unit, am I correct in that?

A Each buying unit, each selling unit, yes.

Q Excuse me, each buying unit. Each couple who attended a dinner party?

A Yes.

Q Where they were sitting each one had a copy of the offering statement and a copy of the property report, is that the way it took place?

A Where they were sitting. It was placed on the table. For me to say where someone placed it, I can't state to that.

Q But each --

A Company policy was that each buying unit should have a property and offering statement presented to them.

Q That's what you instructed the people who worked under you to do, isn't it?

A When I instructed the clinic, yes, I would, absolutely.

Q It was also company policy that misrepresentation by a salesman was forbidden?

A People were discharged.

Q If they misrepresented?

A Yes.

Q Customers were also told when they purchased property that if it was in the undeveloped area, in fact it was in an undeveloped area, isn't that so?

Strike that.

Customers were not told they were buying property in a developed area when in point of fact they were buying in the undeveloped area?

MR. KAUFMAN: Objection.

Q It was company policy, Mr. Monaco, wasn't it, to tell people they were buying undeveloped land when in fact they were?

A It was company policy. It would have to be undeveloped land, there's no question about it.

Q Nobody was ever told they were buying developed land when in point of fact they were buying undeveloped land?

A I don't know if the term undeveloped was used per se in the sale of land. They knew they weren't buying developed land maybe from the speaker's presentation or from a film, but we did not suggest to people that they were buying developed land. It was not company policy.

Q People were told that they were buying land without utilities?

A They were buying land in Rio Rancho.

Q And that if they wanted to build they would be able to exchange land that they bought, the lot they bought into one of the developed areas?

A Yes.

Q Do you know what the exchange provision is?

A I seem to remember it. The fact that if when a purchaser is ready to build, if utilities have not reached his unit and that exchange is changed from time to time, but they could exchange their land into developed area for a lot of equal value. It might not be equal, it may be --

Q Comparable value, does that help you?

A Thank you. Comparable value.

Q To your knowledge while you were with the company, did the company ever fail to fulfill an exchange obligation for any customer?

A No.

A It is also true, isn't it, that customers -- at least company policy was that customers should be told not to expect quick profits from the purchase of the land?

A No.

Q They weren't told that, were they?

A No, they weren't.

THE COURT: Wait. It may be more understanding if you put it in the affirmative rather than the negative.

Q Customers were told they could not expect quick [illegible]t, am I correct in that?

A Customers -- consultants were trained --

THE COURT: Were customers told they could expect quick profits?

THE WITNESS: No, they were not, to the best of my knowledge.

THE COURT: Was there any inference in the material that you were told by the company you could use that a customer could expect quick profits?

THE WITNESS: It is an investment program, but it didn't state whether you could expect quick profits, no.

(Continued on next page.)

Q As part of the training program of salesmen, weren't salesmen told that they could not misrepresent?

A Yes.

Q And that if misrepresentations were made, they would be fired or terminated?

A Yes.

Q When was it you first became general manager of ATC?

A I think it was March 26, 1973.

Q Do you recall at that time having a conversation with Mr. Daniel Friedman in which he said to you that misrepresentations were forbidden and that if anybody made a misrepresentation, they should be dismissed?

A I can't recall that particular phrase in any conversation at that time.

Whether I had it or not, I don't know, Mr. Arkin.

Q Do you recall having had a conversation with Daniel Friedman where he told you that very thing, though?

A Maybe not that very thing, but I know that there was company policy, I know Daniel Friedman had mentioned it to me on more than one occasion, but timing I couldn't put down to whether is was March 26th or any other time.

Q Was it also company policy to give customers refunds where a salesman had, in fact, made a misrepresentation?

A Yes. We had given refunds to people that we felt had been misrepresented to, yes.

Q You became tour director on what date?

A Well, I became tour director for ATC in October of 1970, and for the area in, I think, June of 1971.

Q You took trips to Rio Rancho from 1970 all the way up to 1975, isn't that so?

A Yes.

Q Would you describe for his Honor and the jury the nature of the changes which you observed over the five years you traveled to Rio Rancho from New York?

A Well, I had an opportunity to see Rio Rancho grow, which I did, from the first times I had gone down there in July of 1970, when they were only just starting building Corrales Heights. I saw 1500 homes go up there.

I saw the condominiums go up around the golf course, I think some 160 units.

I saw the golf course being built, I saw a club house.

I did see a community grow substantially to my personal beliefs.

Q Based on your personal observations?

A Yes.

Q So when you made your speeah at the property office at Rio Rancho to the people that were down there visiting and said there was fantastic growth and so forth, that's what you meant, isn't it?

A Yes.

Q Do you have any idea what percentage of cancellations took place on the various tours you were on when you went to Rio Rancho?

A I think I can giveyou a ball park number, yeah.

Q I'll take it.

A Anywhere between 5 and 10 per cent at the most.

Q And if people wanted to cancel, they did get their money back, isn't that so?

A Yes.

Q During those times you were in Albuquerque, did you ever make any inquiries on your own as to the growth and development of the northwest mesa?

A No, I didn't, not the northwest.

I made inquiries about other areas, but not the northwest.

Q You made inquiries about other areas to determine comparable value of lots which were being offered for sale there?

A Well, I did experience quite a bit of conversation and, let's say, did lose a good number of our people that came down to Albuquerque to other sections of the Albuquerque area rather than Rio Rancho.

Q And as part of your inquiries, you determined, didn't you, that lots in other sections were selling for more money than at Rio Rancho?

A An undeveloped lot in the Albuquerque area, a home site, would have cost someone more -- well, it was around $5,000 the last thing I can remember as far as an inquiry I had made.

If someone wanted to purchase an undeveloped lot between Rio Rancho and Albuquerque -- when I say undeveloped, without utilities -- would be around $5,000.

Q Which was more than Rio Rancho lots were selling for?

A More than an undeveloped lot, yes.

Q On the tours, you say you ordinarily took people as part of the tour to the tramway?

A Yes, we did.

Q Where is the tramway in relation to Rio Rancho and Albuquerque?

A It's 12 miles from Rio Rancho, if I remember correctly, and an elevation of some 11,000 feet.

Q Did all of the people who went on tours or most of them, rather, go up to the tramway?

A I would say just about all of the .

Q From the tramway, are you able to see Albuquerque?

A You are able to see Albuquerque and Rio Rancho.

Q In the same view?

A Yes.

Q And, therefore, you could see where Rio Rancho was in relation to Albuquerque?

A Yes.

Q And you could see the road which joined Albuquerque and Rio Rancho?

A Yes.

Q And you could see the extent of the development of Rio Rancho?

A Yes.

Q And the extent of development of Albuquerque?

A Yes.

Q In fact, they even have binoculars up in the tramway?

A Yes.

Q Which you can use to get a close-up view?

A I would say yes.

Q You also, during these tours, had get-togethers or parties whereyou invited Rio Rancho residents to come in and speak to HSO's who flew down with you?

A Yes, we had that Thursday cocktail party the evening prior to property and the Sunday dinner, yes.

Q The barbeque dinner?

A Right.

Q When you invited the Rio Rancho residents, did you tell them what to say to the HSO's from New York?

A No, I did not.

Q These are people whom you described talking more than you did and other salesmen did. Is that what took place?

A Yes, very enthusiastic residents.

Q These were people who said whatever they said of their own volition, to your knowledge?

A Yes.

Q They weren't paid anything?

A No.

Q Given any scripts?

A No.

Q Do you believe it would be fair to say one of the principal inducements for the selling or, rather, buying of land at Rio Rancho was that it offered a better way of life?

A I thought so.

Q That it was an area of the country with good climate?

A Yes.

Q And that a significant portion of the overall presentation was directed toward showing people that it was a better way of life in a sunny part of the country?

A Would you repeat that, please, Mr. Arkin?

Q And the principal part of the sales presentation, meaning the films and the podium speeches and whatever, were directed towards persuading people that Rio Rancho offered a better way of life in a sunny part of the country?

A After a certain point.

Initially, I think our program was geared to more of an investment and then there came a time when we made a change, whether it was 1973 or late in 1972, where we did gear our program more towards that particular expression, a better way of life.

Q But even previously, you emphasized the good things about living at Rio Rancho, didn't you?

A Well, I don't think there was too much development at that time. I'm talking about the early years.

Q When you went down on tours to Albuquerque, did you receive commissions as a tour director for the sale of houses and condominiums?

A Yes, I did.

Q And do you know whether salesmen at Rio Rancho also received commissions for the sale of houses and condominiums?

A Yes, they did.

Q And that was part of company policy to encourage the purchase of homes and condominiums at Rio Rancho?

A Yes, it was.

Q Did you ever hear Dan Friedman say that it was company policy to build a community at Rio Rancho that one could be proud of?

A Yes.

Q Do you recall having seen a film in which a man named Robert Strawn took a part?

A Yes.

Q Was that utilized at dinner parties?

A It became our regular dinner film, yes.

Q You would be able to identify and recognize that film if it were played for you, would you not?

A Yes, I would.

MR. ARKIN: Your Honor, may I make an offer at the side bar?

THE COURT: Yes.

(At the side bar.)

MR. ARKIN: Your Honor, we would like to offer the Robert Strawn film at this point.

This man has not -- I have not shown it to this man personally. I know he can identify it. I don't think Mr. Kaufman will have any problem with its authenticity. But if there is a problem, we can show it to him out of the view of the jury. We would like to offer it and play it now.

THE COURT: Do you have any objection, Mr. Kaufman?

MR. KAUFMAN: Not to that procedure, your Honor, but I think Mr. Arkin ought to elicit when it was that the Robert Strawn film began to be used.

I don't believe we presented any testimony here by victims, at least, who purchased this land at the time a Robert Strawn film was used, but we are perfectly willing to allow the film to go into evidence with the understanding that it was used on and after a certain point in time.

MR. ARKIN: We will stipulate to the date. That is no problem. We can ask him what date it began to be used.

THE COURT: Sure.

MS. HYNES: If he knows.

MR. ARKIN: If he knows.

MS. HYNES: We can stipulate it was used at the end of February of 1974 was the first time it was used, if you want to stipulate to that, Mr. Arkin.

MR. ARKIN: I am not sure that is the right date, Ms. Hynes.

MS. HYNES: It is the right date by company documents as far as when the film was actually shipped out to the sales offices and used.

MR. ARKIN: Why don't we ask him what date it was and I think that will probably clear it up. He was sales manager or general manager.

THE COURT: All right.

(In open court.)

CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q Mr. Monaco, do you know at what point the Robert Strawn film to which I have just referred began being used by the company?

A I would approximate either the end of 1973 or early in 1973.

MR. ARKIN: Your Honor, based upon our side bar discussion, I offer that.

MR. KAUFMAN: No objection, your Honor.

THE COURT: All right.,

MR. ARKIN: If your Honor please, may we play that film?

We have a projector and screen.

THE COURT: Where is it?

Let us hold it until we get a recess and during the recess we can set it up instead of wasting time now.

MR. ARKIN: Fine.

THE COURT: Continue your cross examination of the witness.

MR. ARKIN: All right.

Q Mr. Monaco, it was part of the company policy -- strike that.

Was it part of company policy, to your knowledge, to grant refunds to customers who, for reasons of hardship, such as loss of a job or death or illness, were unable to pay for the property which they purchased?

A Yes. We had made a number of refunds under those conditions.

Company policy, AMREP company policy certainly put the general manager and the area director in a position where the ywould determine whether to refund or not based upon their approval..

Q Based on the approval of the general manager?

A Recommendations by the general manager and the area director.

(Continued on next page.)

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Q So that you were in a position as general manager to recommend to the company that any particular customer who had a hardship should be granted a refund?

A Yes, I was.

Q And if you recommend it, the company went along with it, generall, isn't that so?

A Yes, they did.

Q These hardship refunds were made despite the fact that the customer may not have had any contractual right to get his money back?

A Yes.

Q Did the company also grant moratoriums to people who were unable to pay?

A Yes, they did.

Q What is a moratorium?

A A moratorium is when the contract did call for at one time a sixty day moratorium for any property owner that couldn't make their payments, then without forefeiture we would extend that particular period of time or grant another one if the case called for it.

Q Based upon the hardship of the individual involved?

A Yes.

Q The reason for this is the company wanted to keep its customers?

A They wanted to retain the customer, yes.

Q Did you also give what is called cutbacks?

A Yes.

Q What is a cutback?

A A cutback would refer to the fact that we would reduce someone's holdings if they were having difficulty making the payments and reduce it to an area or an amount that they could sufficiently pay ever month.

Q At the same time, would you apply towards the property, towards the purchase of the property which was retained by the customer all the monies that the customer previously paid on the other purchased property?

A The monies that they previously paid would be applied to the remaining portion of property.

Q The remaining property, right?

A Yes.

Q How long have you known Leonard Geller?

A I was friendly with Leonard Geller's broker forty years ago, so I know Leonard Geller, not as a friend, but I know of him and I know him for forty years.

Q Have you worked with him since the first day you came to work for ATC?

A Since the first day? Worked for the same company or worked with him?

Q Well, you worked in the same office with him?

A I worked in the same office, yes.

Q And there came a point when he was area director, am I right about that?

A Well, he was general manager and I was a salesman, something to that effect.

Q When you became general manager, what was Leonard Geller's position?

A He then became area director, also.

Q And you two ran ATC for a period of time?

A From March of 1973.

Q Before that it was Pete Miller and Len Geller who ran ATC?

A Yes.

Q During your direct examination you testified that you had pleaded guilty to an information in this courthouse charging you with defrauding AMREP, Rio Rancho, as well as some of its customers, is that right?

A Yes.

Q And you pleaded guilty to having falsely obtained refunds on behalf of customers from the company and in not giving the entire refund to the customer?

A The latter part of that is correct, not the first part.

Q You mean the refund that you obtained from the company was based on real hardship?

A Right.

Q But what the company didn't know and the customer -- well, what the company didn't know was that you were keeping a part of it?

A I was retaining what would be considered the interest of it, yes.

Q You never told the company about that?

A No, I never did.

Q The only person who knew about that was Mr. Geller and you?

A Yes.

Q You told customers when you retained -- customer who got refunds when you retained a portion of their refund that you had to retain that to pay somebody off in the company?

A Not as a general rule, no.

Q But sometimes you did?

A Yeah, in two or three cases.

Q But you never did pay anybody off in the company, did you?

A No, we didn't.

Q By the way, as a portion or a part of the deal you got when you pleaded guilty, did you agree or did the government ask you to agree to pay back the monies which you took to the company or to the customers?

A No.

Q When you signed the immunity agreement, at that time the prosecutor was Mr. James Nesland.

Do you remember that?

A Are you referring to immunity from -- I have two cases here. One is an immunity which is an AMREP proceeding, which I am sitting in this chair as a witness.

Q I am talking about the deal you signed in respect to your fraud on the company.

A I don't have immunity.

Q Excuse me.

The deal that you signed about the treatment that you would receive -- do you remember signing --

A Yes, an agreement with -- yes.

Q The agreement you signed, that was with Mr. James Nesland, wasn't it, an assistant U.S. Attorney?

A Yes, it was, I think, yes.

Q And he said to you the agreement said if you cooperated in that case, the one that you pleaded guilty on, and this case, that would be brought to the attention of the sentencing Judge, am I correct in that?

A Yes, you are correct in -- he did say if I cooperated, they would make -- they would tell the Judge, yes.

But they also told me one thing more --

Q Well, I will ask you the questions, sir.

You were dealing with Mr. Nesland, am I correct?

A James Nesland, yes.

Q Then there came a time when the prosecutor in that case changed.

A In that case? I don't think so.

It may have, but I think Mr. Nesland was -- no, Mr. Nesland was there when I was brought before the Judge and I Pleaded guilty to those two counts.

Q Do you know who the Assistant U.S. Attorney is who now has responsibility for the case in which you were charged and to which you pleaded guilty of defrauding the company?

A No, I don't. I have never been in contact with anyone since that particular time.

Q Do you know how it was that the fraud to which you pleaded guilty on the company was uncovered?

A Do I know how it was uncovered?

Q Yes.

A Yes, I do.

Q How was that?

A A customer named Dolce Miscolia sent a letter into Albuquerque or to the offices of AMREP and stated that-- I don't remember exactly what he stated, but he stated that he had asked for a refund, he had agreed to a certain amount of dollars and now he wanted the balance of it, something like that.

I don't know what exactly he said, but I know that's the gentleman that was involved, and upon finding that out, I then knew that, of course, AMREP was investigating it and I did go to the offices of Dan Friedman the next day and -- that was the last contact I had with AMREP, except for you.

Q Do you know that the AMREP Corporation reported your particular conduct to the authorities?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A No, no. I don't.

Q But you do know that your conduct formed the basis for AMREP terminating your employment, isn't that so?

A Yes, I do.

MR. ARKIN: I have no further questions at the present time.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Monaco, my name is Fleming and I represent Dan Friedman and Chester Carity.

In all fairness, am I correct that Leonard Geller was engaged in this fraud to which you pleaded guilty to before you were ever engaged in it?

A Yes, he was.

Q Am I correct and in fairness, did you find out about it?

A Yes, I did.

Q And did you confront him with it?

A Yes, I did.

Q And did he, in essence, talk you into going along?

A Yes.

Q You testified about a flight into Albuquerque where the pilot announced if you look out the right side you can see Rio Rancho, and I think you testified the plane wasthen at about, as far as you can tell, between five and ten thousand feet?

A It could have been three thousand feet. I couldn't guess at the altitude, I am just assuming.

Q You have seen Rio Rancho on the ground many times.

A Yes, I have.

Q And as you have testified, you have seen it grow?

A Yes, I have.

Q If it were your job to take a film of Rio Rancho to accurately and fairly picture Rio Rancho, would you take that film from 5,000 feet?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. FLEMING: May I make an offer on this, your Honor?

THE COURT: He is just an ordinary person riding in an airplane.

Q Well, did you look out the window at Rio Rancho at 5,000 feet?

A Yes, I have.

Q Does it fairly and accurately portray Rio Rancho?

A Well, that's --

THE COURT: From 5,000 feet.

Next question.

MR. FLEMING: Okay.

A That's --

THE COURT: All right.

Q What floor is the stadium -- where is the stadium club located in Albuquerque?

A Northeast section of Albuquerque, if I remember correctly.

Q Is it a ground floor place?

A The stadium club is, yes, one level, yes.

Q And that is where you would have the dinner and dancing the first in Albuquerque?

A Either there or the barn theater, which is a considerable way into the Siandia Mountains.

Q By the way, you would have lunch at the golf course the next day?

A Yes.

Q When you sit in that dining room, the putting green was right in front of the window?

A Yes.

Q You could see Albuquerque from the dining room of the --

A Yes, you can.

Q You can see the Siandia Mountains?

A Directly in front of it.

Q You can see some of the developed area of Rio Rancho?

A Yes, you can.

Q Is it true that you can also see some of the undeveloped land at Rio Rancho?

A To the left, yes, you can.

Q As a matter of fact, as you drive into the entrance of Rio Rancho to go to the golf course, you have to drive a mile or so through area which is developed and undeveloped, isn't that right?

A Yes, I would say yes. I would say yes.

Q And the homesite owners down on tours saw that on Friday?

A Just let me correct that answer for a minute.

I think the area driving up to the golf club area is part of the community and there may be a block or two or three, I don't know. I'm not for sure certain. I won't phrase my answer to say a mile or two of undeveloped land.

Q You drive up and you have to take a right to go to the golf course and on the left there is an undeveloped area.

A On the left is the condominiums and past that is the undeveloped land.

Q By the way, did you testify that certain people that went down on the tours actually went out and saw real estate agents and bought land other than Rio Rancho land?

A I don't remember testifying to that, but I know that people on tours, as long as you are asking, may have bought homes in Albuquerque while they were down there.

As far as a aparcel of land other than at Rio Rancho, I can't ever recall anybody buying another piece of land.

Q But you do recall entering into property transactions with owners other than Rio Rancho while they were in Albuquerque on a Rio Rancho tour?

A Oh, property owners? Yes, yes, I do.

Q So it is fair to say, then, that they were not kept under lock and key when they were on the tour?

A Yes.

MR. FLEMING: I think that's all I have.

THE COURT: We will have a recess.

YOu can set up the camera.

(Recess)

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(In open court - jury present)

THE COURT: What exhibit number are you giving the film?

MR. ARKIN: I understand that we are using the prosecution copy of it. We can use your number. It is marked as Government's Exhibit for identification --

THE COURT: You are offering it. Let's have a number.

MR. ARKIN: All right, that will be BR.

(Defendant Howard Friedman and Henry Hoffman Exhibit BR received in evidence)

xxx

THE COURT: All right.

MR. ARKIN: Could we shut the lights off?

THE CLERK: Yes.

(Defendants Exhibit BR in evidence shown to the jury)

THE COURT: You may redirect.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

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Q Mr. Monaco, I believe you testified that Robert Vaught film came into use in either late '73 or early '74, is that right?

A Yes, sir, I did.

Q Was that around the time when the emphasis at the Rio Rancho sales dinners changed from investment to a bettery way of life?

A It may have changed slightly prior to the showing of the film.

Q I am sorry, I didn't hear you.

A I said it may have changed -- I am sure it did change just prior to the showing of the film, whether it was early '73 or late '72, I am not certain.

Q Do you recognize the developed portions of Rio Rancho that are shown in the Robert Vaughn film?

A Yes, I do.

Q With respect to the residential area, what section was that?

A Well, they did show the Corrales Heights area, they showed the golf course area, the condominiums situated along the fairways.

Q Do you know if they showed any of Unit 11 there?

A I couldn't say that they did.

Q Do you know if they showed any of Unit 7 there?

A I couldn't say that they did.

Q How did Unit 11 and Unit 7 differ from Corrales Heights, if there was a difference?

A I think Unit 11 has about 50 or had about 50 homes to the best of my recollection a few years ago when I was down there or just last year, between 50 and 100 homes.

Unit 7, utilities were in Unit 7. The number of homes in there I am not sure, but just a few, if any.

Q Was Unit 7 the new even exchange area?

A Yes.

Q In other words, that is where you would get a half acre of land in return for your half acre of land?

A Yes.

Q How did the exchange into Corrales Heights work?

A The contracts -- the most recent contract when I was with the company was worded for the effect that you could exchange a lot for a building lot of comparable value, not less than I think 9,000 square feet. I am not completely certain of the wording, but I think that is it.

Q Regardless of the wording of the provision, what was the end result of the transfer into Corrales Heights?

A If someone were transferring a half acre of land into Corrales Heights, they usually were transferring to a quarter acre lot.

Q Did it cost the homesite owner any more to transfer into Corrales Heights?

A At one time it did going back a couple of years. That was that comparable value where a homesite in Corrales Heights I think a customer had to pay an additional $1500 to transfer into there.

Later on, if I remember correctly, the house and lot were one price and you were given a present value of your property toward the exchange.

Q That still resulted in having to pay more for the land and house you were getting in Corrales Heights?

A It may have, but I don't think it was broken down as far as the cost of the home.

Q In other words, the home and the land was lumped together in one price?

A Was one price.

Q I believe you testified that you lost people on tours to other sections of Albuquerque. Do you recall that?

A The expression we lost people, we may have brought people down that purchased homes in areas other than Rio Rancho. They did buy homes in maybe the northeast section or Albuquerque itself.

Q Were these homes more expensive or less expensive than the homes that were available at Rio Rancho?

A They did buy homes -- they did buy resale homes which were less than what they would have purchased a home at Rio Rancho.

THE COURT: What does that mean, a resale home?

THE WITNESS: Meaning they bought an existing home from someone living in the Albuquerque area.

Q Do you recall Mr. Arkin asking you whether or not you received commission payments on homes?

A I will say yes. I am not certain, but I am sure he did.

Q Did you receive commission payments on homes?

A Yes, I did receive commission payments on homes.

Q At what rate?

A My structure did change, but I am pretty sure for most of the time that I was employed as housing director or tour director a quarter of one percent.

It could have been a half of one percent in the early years and later on changed to a quarter of one percent.

Q Did you receive commissions on land that was sold on your tours?

A Yes,I did.

Q At what rate was your commission on land that you sold?

A Land that was sold, additional land that was sold on tour I received a commission at the rate of one percent.

MR. KAUFMAN: May I have a moment, your HOnor?

(Pause)

MR. KAUFMAN: No further questions, your Honor.

THE COURT: Mr. Monaco, I would like to clear something up.

When a person came to one of these dinners that you described to us, were they being sold undeveloped land with the understanding that if they wished to build they would have to first buy this land and then transfer it into the developed area at the exchange rate?

THE WITNESS: It was explained to them, your Honor, the fact that if they bought land in the undeveloped area, that if utilities did not reach that site when they were ready to build, they could exercise the transfer privilege.

THE COURT: Therefore, people who came to those dinners were buying not for the purpose of building right away, but either sometime in the future or were buying for investment to sell to somebody else in the future?

THE WITNESS: Yes, sir.

THE COURT: Supposing you went to a dinner and you said, I want to buy land because I want to build a house tomorrow. Would you sell the person land in the developed area directly?

THE WITNESS: No.

THE COURT: So the purchaser knew that?

THE WITNESS: Yes, I would say if he asked that question he would have to be made aware of it, yes.

THE COURT: You weren't hold out to anybody the fact that they were buying land ready for building?

THE WITNESS: No one bought at a dinner to my knowledge expecting to go down and build a house on it.

THE COURT: All right, thank you. You may step down.

MR. ARKIN: Could I ask one question, your Honor.

THE COURT: Yes.

RECROSS EXAMINATION

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BY MR. ARISOHN:

Q Mr. Monaco, the commission you received on the sale of a house was upon the cost or the price rather of the house together with the land, is that not so?

A Yes, it was the full package price, yes.

Q And the commission that you received on the sale of the land was only on the parcel of land?

A My land commission was based on the sale of land, on undeveloped land.

Q The house and lot together sells for far more than a piece of land alone, doesn't it?

A Yes, it does.

THE COURT: This was an override commission, wasn't it?

THE WITNESS: Yes.

THE COURT: You may step down.

(Witness excused.

THE COURT: Next witness.

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MR. DEVORKIN: Your Honor, we have an application at the side bar.

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes.

MR. DEVORKIN: Your Honor, I would ask your Honor's permission to lead the next witness for the following reasons.

THE COURT: What's his name?

MR. DEVORKIN: Don Potter. He held different positions but he was sales manager at Rio Rancho Estates at one time in the late '60's and early '70's.

My reason for this are twofold:

Mr. Potter has been interviewed on specifically three occasions by the government. Once by the Federal Trade Commission. Once briefly by Mr. Kaufman on the telephone. And by me for the first time today.

On these three occasions his memory varies radically to various events and various facts. He remembers some things that he said at one time. He doesn't remember them later on and vice versa on very material points.

In addition to that, I think he has some financial interest that he in the back of his mind might feel, eojb 2

although he does not concede this, that he might feel has a bearing on his position and that is that he owns a home at Silver Springs Shores and he has had some difficulty selling that home. I think that -- although he will not concede this or say this affects him at all today -- that -- or would affect him, let me put it that way -- there is a possibility that I think he would say that he could become more difficult for him to sell his home if his testimony were substantially --

THE COURT: That's very vague.

You are the one who is making these representations. You say you think. He won't say it.

MR. DEVORKIN: I agree. I don't want to overstate the case.

THE COURT: Therefore, I can't take that as a reason.

MS. HYNES: May I add to the application? In connection with Mr. Potter, I had a conversation with attorneys from the Federal Trade Commission who had interviewed Mr. Potter. At that time they stated that Mr. Potter had very material information to give not only in their case but thought he would have material information to give in this case.

THE COURT: When was this?

MS. HYNES: This was within the last eight months, your Honor.

The attorney for the Federal Trade Commission by the name of Perry Winston told me that he visited Mr. Potter in Florida. Mr. Potter had a business, I think it was in the fire extinguisher or some line such as that, and that his main client was AMREP and for that reason that Mr. Potter was reluctant to testify in the Federal Trade Commission hearing because it would affect his business and that he, in fact, supplied the equipment of his fire extinguishing equipment and whatever other equipment he sold to homes at Silver Springs Shores that he had a financial interest in and that he was afraid that that interest would be cut off and he would no longer have AMREP as a client if he did testify, although he was a person who was in a managerial position at one point and did have material information to give.

I think that basically the government --

THE COURT: Did you put him in the grand jury?

MS. HYNES: This was after that.

THE COURT: Did you put him under oath in the Federal Trade Commission?

MS. HYNES: He was not called as a witness --

THE COURT: By anybody?

MS. HYNES: Listen, your Honor.

THE COURT: I asked was he called as a witness in the Federal Trade Commission.

MS. HYNES: No.

THE COURT: Iam not granting the application until I have some idea that this is necessary. What you have told me so far doesn't prove anything.

MS. HYNES: Okay.

(In open court.)

MR. DEVORKIN: The government calls Don Potter.

XXX DONOVAN POTTER, called as a witness by the government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

XXX DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Potter, how old are you?

A 45.

Q Where do you currently live?

A At 6 Emerald Court in Silver Springs Shores, Ocala, Florida.

Q In Florida?

A In Florida.

Q What do you do for a living?

A I have a fire and safety equipment company.

Q Do you sell that kind of equipment?

A That's right.

Q What is your educational background?

A About two years of college.

Q Did you ever work for AMREP Corporation?

A Yes, sir.

Q When was that?

A Since 1967. I believe it was around March of '73 that I left.

Q Did you ever work for Rio Rancho Estates Corporation?

A Yes, sir.

Q What periods of time did you work for Rio Rancho?

A About a year or a year and a half prior to leaving AMREP I was at Rio Rancho Estates.

Q That would be 1971, approximately?

A Yes, sir.

THE COURT: From '71 to '73 you worked for Rio Rancho Estates out at Albuquerque?

THE WITNESS: Excuse me, sir?

THE COURT: You worked for Rio Rancho Estates in Albuquerque from 1971 to 1973?

THE WITNESS: No, sir. About a year or a year and a half prior to my leaving AMREP I was transferred to Silver Springs Shores.

THE COURT: When did you start working for Rio Rancho at Albuquerque?

THE WITNESS: In 1967.

THE COURT: You started out there?

THE WITNESS: Yes.

THE COURT: All right. You stayed there for a year and a half or you stayed there until 1971, which is it?

THE WITNESS: Until 1971.

THE COURT: All right.

Q Who hired you initially at Rio Rancho?

A Bob Berg.

Q What was his position?

A Sales manager.

Q What were you hired to do?

A I was hired as a land consultant.

Q What were the duties of a land consultant in 1967?

A Take customers that had purchased or reserved land at Rio Rancho and show them their lot, show them where it was.

Q Did this include people who had come out to Rio

Rancho on an AMREP tour?

A Yes, sir.

Q And did it also include people who came to the property on their own?

A Yes.

Q Did you receive any training of any kind for the job as a land consultant?

A Not really as I recall. Just --

Q Just what?

A Well, the biggest thing was learning where all the lots were located and that type of thing.

Q How were you paid initially?

A I believe it was on a draw basis like 100 or $150 a week against a draw on commission.

Q What kind of commissions didyou get?

A It was commissions on solidification of lots and the sale of new lots or upgrades.

Q What do you mean by solidification?

A If a lot was sold in the field, the people had six months in which to visit Rio Rancho Estates and make their determination as to whether they wanted to retain the property or turn it back in. As a land consultant I would take them to the lot and try my best to convince them that they should keep their land. If they decided not to sell, they would sign a statement to that effect and that was a solidification.

Q What percentage commission did you get on solidifications in the beginning?

A Approximately 70 per cent.

Q Imean what percentage did you as a land consultant receive as a commission on a solidification?

A Oh. The pay plan changed many, many times. I can't recall for sure. I believe it was 2 per cent of the value on a solidification.

Q That would be of the purchase price of the contract?

A That's right.

Q When you say the field, what do you mean by that, when somebody bought in the field office,what do you mean by that?

A Well, when someone had reserved or purchased a lot in the field and they were at the property --

Q What do you mean by the field, what are you referring to?

A A field office located in New York, New Jersey, wherever.

Q What percentage commission did you receive on additional sales or upgrades?

A I believe it was 5 per cent. I can't remember for sure.

Q Did your job include trying to sell additional property and upgrading?

A Yes, sir.

Q Who is John Sommerholder?

A He was the vice president and general manager of Rio Rancho Estates when I started there.

Q He worked on the property itself?

A Yes. When I first became employed there his office was downtown Albuquerque and then, I don't know, a few months later he moved his office out on the property.

Q Do you recall who Bob Berg reported to?

A Well, John Sommerholder for one on the property and I don't recall who else.

Q When you were trying to sell someone additional property, what, if any, reasons did you give them for buying additional property?

MR. FLEMING: May we fix a time, your Honor? This is a four-year period of time as I understand it.

THE COURT: Yes.

MR. DEVORKIN: Withdraw that question.

Q How long did you work as a land consultant?

A I am guessing. Approximately a year.

Q During the period of time that you worked as a land consultant, what reasons, if any, did you give people when you tried to sell them more property?

A It was a financially good investment and if they wanted to live at Rio Rancho they could exchange their homesite into the building area at no additional cost.

Q What type of lots were you selling when you were a land consultant, do you recall?

A Mostly residential lots.

Q Did you also sell some commercial property?

A There was some commercial property, yes.

Q Did you sell multi-dwelling property?

A Yes, sir.

Q Did you sell ranchettes?

A Yes, sir.

Q Do you recall where the commercial and multi-dwelling property was located?

A Well, that was throughout the property. I believe there was commercial and multi-dwelling property in most every unit.

Q Where were the ranchettes located?

A I believe it was Unit 17.

Q Just briefly, what was a ranchette when you were selling them as a land consultant?

MR. FLEMING: Your Honor, I object. We have had all this, I think.

THE COURT: Overruled.

A It was property divided up in, oh, three to fifteen acre sites. It was land that was quite rolling.

Q Were there any exchange privileges on a ranchette?

A Not that I recall.

Q What about commercial property or multi-dwelling property?

A No, sir.

Q I'm sorry.

A No.

Q After you stopped being a land consultant, what did you do next?

A I was then an assistant to Bob Berg for a while.

Q And what were your responsibilities, just briefly?

A Well, I still worked as a land consultant.

MR. FLEMING: I am sorry to interrupt Mr. Potter.

Can we fix a time when this change --

Q How long did you stay as an assistant to Mr. Berg, do you recall?

A I really don't recall.

Maybe six, eight months.

Q What were your responsibilities?

A The same as the land consultant, plus helping Bob Berg coordinate tours that were coming in, assigning consultants to customers.

Q After that period of time, did you get a new assignment?

THE COURT: When was that?

Q You say you were an assistant manager about a year, is that correct?

A I am having trouble recalling the time span, but that possibly could be.

Q Did you get a new job after you were assistant manager?

A Then I became the sales manager.

Q When was that, approximately?

A Probably the latter part of 1968.

Q What were your responsibilities as sales manager?

A Overseeing the land consultants, the tour department -- I was responsible for the personnel there, which handled the tours that were brought in.

Q Who was the tour director at that time? Was there a tour director?

A Yes. Jim Wall.

Q He reported to you ?

A Yes.

Q He was tour director on the property?

A Yes, sir.

Q Who was your immediate superior initially when you were sales manager?

A I believe Duke Mandel was the first -- the vice-president of price for AMREP at that time, and also I answered to the general manager on site. I had two people I answered to.

Q That was Mr. Summerhaulder?

A Yes.

Q Did there come a time when your superior changed?

THE COURT: When?

THE WITNESS: Yes.

MR. DEVORKIN: I am going to ask him that next, your Honor.

THE COURT: Where is it? You have him under Mandel at one time, you have him under Berg another time.

I don't know where I am.

Q You worked for Mr. Mandel when you were sales manager, is that correct?

A Yes. Mandel was --

Q You worked for Mr. Mandel when you were sales manager, correct?

A I believe he was when I was sales manager.

Q You replaced Mr. Berg?

A Yes.

Q Do you recall how long you worked for Mr. Mandel?

A No, sir, but it was not very long.

Q And who succeeded Mr. Mandel?

A Peter Zaknich.

Q How long did you work for Mr. Zaknich?

A I can't recall the dates on this. Approximatel a year, at just a guess.

Q Would that be 1970, approximately?

A Yes, sir.

Q Who succeeded Mr. Zaknich, if anyone?

A Dan Friedman.

Q Do you recall when that was?

A Again, I can't remember the dates.

Q 1971 or 1972?

A Yes, sir.

Q Is that a fair estimate?

A Yes, sir.

Q You were still sales manager?

A Yes.

Q What was Mr. Friedman's title?

A Vice-president of sales for AMREP.

Q He was located in New York?

A Yes.

Q Do you see Mr. Daniel Friedman in the courtroom anywhere?

A Excuse me?

Q Do you see Mr. Daniel Friedman in the courtroom anywhere?

A Yes, sir.

Q Would you please point him out?

A The gentleman sitting in the white shirt on the end.

MR. DEVORKIN: May the record reflect the witness has identified the defendant Daniel Friedman?

THE COURT: Yes.

Q During the time that you were sales manager at Rio Rancho Estates, did you travel back to New York to AMREP's offices?

Q Occasionally.

Q Approximately how frequently?

A Maybe once every other month.

Q Who would you meet with, if anyone, back at AMREP's offices in New York?

A Normally it was meetings with the regional managers in the field and some personnel at the AMREP office.

Q Would any of the AMREP officers attend those meetings?

A Yes.

Q Which ones?

A Well, off and on, you know, Chester Carity would drop in and out from time to time at the meetings.

Dan Friedman would conduct the meetings most, if not all the time.

Sol Friend would be there in and out.

Q Do you see Chester Carity in the courtroom anywhere?

A Yes, sir.

Q Would you please point him out?

A The gentleman with the blue suit.

MR. DEVORKIN: May the record reflect the witness has identified the defendant Carity.

THE COURT: Yes.

Q Do you see Solomon Friend in the courtroom anywhere?

A Yes, sir.

Q Would you please point him out?

A The one at the end at the table.

MR. DEVORKIN: May the record reflect that the witness has identified the defendant Friend.

Q What was the purpose, just generally speaking, of these meetings in New York?

A Orientation, briefing, new things that would be coming up, sales training -- I don't know if it was so much sales training as it was just general briefings.

Q Did you review sales volumes of various offices?

A Yes, sir.

Q Did you review the process of solidifying the purchases?

MR. FLEMING: I don't understand the form of that question, if your Honor please.

THE COURT: Did you discuss the procedure for solidifying purchasing?

MR. FLEMING: I understand that question.

Q Did you discuss that subject?

A I can't remember specifically. Possibly yes.

MR. FLEMING: I move to strike it.

THE COURT: He is in the middle and you move to strike before he finished.

Is there anything else you want to say?

THE WITNESS: No, sir.

THE COURT: Motion granted.

Stike the answer.

Q Did you discuss cancellations or cancellation rates?

A Yes, sir.

Q What were the nature of those discussions about cancellations and cancellation rates?

MR. FLEMING: Your Honor, could we find out who was there when these discussions took place?

THE COURT: Yes.

Q We are talking about meetings that you attended, right, Mr. Potter?

A Yes.

THE COURT: Yes. We want to know whether the defendants were there.

That is what Mr. Fleming's request is.

Q The meetings we are talking about, are these the meetings that Dan Friedman ran?

A Yes.

MR. FLEMING: The testimony was that Daniel Friedman, as I have them, would conduct them from time to time.

Q Well, when you reported to Dan Friedman when he was vice-president of AMREP, who ran those meetings?

A Dan Friedman.

Q And the other defendants you mentioned were there from time to time or came in and out?

A That's right. They would just occasionally drop in and out.

Q Do you have any specific recollection of which conversations they were present for and which ones they weren't?

A No, sir.

Q As best you can recall, at the meetings Dan Friedman was running, what was the nature of the discussion about cancellations and cancellation rates?

A Well, he would review why cancellations were happening and what to -- what -- discuss what could be done to lower the cancellations.

Q Did he make suggestions about that?

A As I recall, it was mostly a discussion.

The area supervisors had lots of suggestions.

THE COURT: Was there any policy adopted, any directives issued as a result of your discussions?

THE WITNESS: I don't recall of any, no, sir.

MR. DEVORKIN: I offer Government Exhibit 520.

MR. FLEMING: Mr. Potter, where were you? Were you at Rio Rancho or Silver Springs Shore on October 11, 1972?

THE WITNESS: You say where was I on February 11th?

THE COURT: That's right.

MR. FLEMING: October 11, 1972.

Were you working at Rio Rancho or were you working at Silver Springs Shores?

THE WITNESS: I'm not sure of my dates. I believe I was at Silver Springs Shores then.

MR. FLEMING: I object to it.

THE COURT: His testimony is he left Rio in 1971.

MR. FLEMING: That's my recollection.

THE COURT: Objection sustained.

MR. DEVORKIN: Your Honor, may I hand the document to your Honor for your Honor's --

THE COURT: Objection sustained.

Just as I excluded on Mr. Kaufman's motion documents that were dated after the event, so I must exclude this as this witness said he left in 1971.

Q Would you look at Government Exhibit 520, Mr. Potter (Handing).

(Pause)

Q Do you recall receiving this memo?

A I don't recall it.

Q Who is Ray Radcliff?

A He was my assistant in Albuquerque and also in Silver Springs Shores.

Q Did he leave Rio Rancho to go with you to Silver Springs Shores?

A Yes.

Q Do you recall when you -- withdrawn.

When you were with Rio Rancho Estates, do you recall whether the subject matter of Government Exhibit 520 for identification ever came up?

A No, sir.

Q You don't recall that?

A No.

Q Did you remain sales manager until 1971, when you left Rio Rancho Estates?

A I was, yes.

Q That was your position right up through the time you went to Silver Springs Shores?

A Yes.

Q Did there come a time when you were with Rio Rancho Estates when you established any type of sales program at Rio Rancho Estates?

A Well, we established what we called an OPC program.

Q Do you recall when that was, approximately?

A Approximately 1970.

Q And what did the OPC program consist of?

A Of soliciting people in the Albuquerque area, giving them a presentation -- these were normally tourists -- and taking them to Rio Rancho Estates, giving them a presentation and attempting to sell land and houses.

Q How did the tourists find their way from wherever they were to Rio Rancho Estates for the presentation?

MR. FLEMING: Wait a minute.

Mr. Devorkin --

MR. DEVORKIN: I can't ask the question if you interrupt me in the middle of it.

THE COURT: It is perfectly obvious that the question isn't properly framed.

Q Mr. Potter, was there any program by Rio

Rancho to bring the tourists to the presentation?

MR. FLEMING: Your Honor, I object.

THE COURT: Overruled.

He asked him whether there was a program.

MR. FLEMING: HIs testimony was soliciting people in the Albuquerque area and that has been transformed to tourists in the Albuquerque area.

MR. DEVORKIN: The witness said tourists.

THE COURT: Mr. Devorkin.

MR. DEVORKIN: I apologize, your Honor.

THE COURT: The objection is overruled.

Q Was there a program?

A Yes, sir.

Q What did the program consist of?

A We had -- there were some girls that worked this Old Town -- that is a tourists attraction in Albuquerque -- that would approach people there and present to them the opportunity to visit Rio Rancho Estates, to receive a sales presentation, and for that they would receive free lunch and tickets to Siandia tram.

Q The free lunch was at Rio Rancho Estates?

A Yes, sir.

Q Is that where the presentation was?

A That's right.

Q Just in general, what did the presentation consist of?

A Showing them a movie and giving them, you know, a presentation.

Q A speech of some kind?

A Yes.

Q Do you recall the name of the movie which was shown?

A There were two different movies and I'm not sure -- I can't recall which one was used. Maybe the West Side Story. I think that was one that was used.

Q Was there a movie called Your Golden Future?

A I believe so.

Q Was that used, also, during the presentation?

A I think so.

Q Did you have any promotional literature at those presentations?

A I don't recall the specific promotional material.

Q But was there promotional material at the presentation?

A Yes, yes.

Q Where did the promotional material and the films come from?

A AMREP.

Q In New York?

A In New York.

Q Was there a script of any kind for the presentation?

A Yes.

Q Where did the script come from?

A That was taken from -- derived from the script that I understood was being used in the field.

I don't recall, you know, just who -- the details, but I know this was what was used. Then it was redone to fit it on the site program.

Q Where did you physically get those scripts from?

A To the best of my recollection, they came from AMREP. They would have no other place to get them.

Q As best as you recall, what was the primary reason given in the presentation to those people to buy Rio Rancho lots?

A It was a financially good investment and an exchange privilege that allowed them to -- any time they wanted to build, they could have their lot in the immediate building area.

Q Did you ever hear the term financial leverage?

A Yes, sir.

Q Was that used at some point in the OPC program?

A Yes, sir.

Q Did the customer get to see their property right then and there if they decided to buy?

A Yes.

Q And did those customers who purchased land at an OPC presentation get a six month refund privilege?

A No. No, sir.

Q Do you recall in the presentation making any comparisons with -- excuse me -- between Rio Rancho and other forms of investments?

A I know mutual funds was involved with this.

I don't recall the whole financial leverage scheme now.

Q Do you recall whether stocks and bank accounts were used for comparisons?

A Yes, I think it was.

Q Were there any rates of return used in connection with those other forms of investments?

A Yes.

Q Just generally speaking, was there -- withdrawn.

Was there a rate of return used for land investments?

A I don't quite understand.

Q Did the speaker giving the presentation use any figure for the rate of return for land investments?

A I just don't recall that specifically, how the presentation was delivered. I just don't recall.

Q Do you recall any comparisons between the rate of return on land investments and the rate of return on other forms of investments?

A Such as a savings account. Yes, I remember that.

Q What kind of comparison was made?

A Well, the land investment was shown to be a lot -- considerably much greater than other form of investment.

Q At the time you were selling Rio Rancho land at OPC presentations as an investment, good investment, were you aware of any resale market for Rio Rancho land?

MR. FLEMING: Objection.

A No, sir.

THE COURT: Overruled.

Q What was your answer?

A No, sir.

Q Did Rio Rancho ever receive inquiries from homesite owners about how they might go about selling their lots?

A Yes.

Q From time to time that would happen?

A From time to time that would be.

Q Was there any company response to those requests or inquiries?

A I believe Marian Newman was the girl at Rio Rancho that -- I believe her title was public relations -- handled most of this and, as I recall, there was a rather form letter that was given. I don't recall what the letter was.

Q In 1969, Rio Rancho was how large, do you recall?

A 50,000 acres.

Q Now, there came a time when it became larger, is that correct?

A Yes.

Q When it was still 50,000 acres, what, if anything, was said to customers by sales people under your direction with respect to the sales of Rio Rancho lots, the rate of sales of Rio Rancho lots?

A As soon as the 50,000 acres was sold, then the only place anybody could buy a lot would be from somebody that already had purchased one.

Q Was anything said about the customer's ability to resell or likely ability to resell?

A No, sir.

Q Well, Mr. Potter, do you recall whether people were told that they would be able to resell their lots once Rio Rancho had been fully sold out?

MR. FLEMING: Objection.

THE COURT: Objection sustained.

MR. DEVORKIN: Your Honor, on that question and answer, I would make the application I made at the side bar.

THE COURT: No. Denied.

Q Do you recall whether anything was said to customers about the supply and demand for Rio Rancho lots?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Do you recall anything else being said to the customers about what would happen when the 55 or 50,000 acres of Rio Rancho was fully sold out?

MR. FLEMING: I object, your Honor.

THE COURT: Sustained.

Q Do you recall when Rio Rancho became larger?

A I -- it became larger. I don't recall the, you know, time that it actually happened.

THE COURT: You were there?

THE WITNESS: Yes.

THE COURT: All right.

Q How did you first learn about it?

A I don't -- I really can't say. I don't know. It just happened.

Q Were you informed of this by anybody from New York?

A I -- I really don't know how I was informed.

Q But you were informed at some point that Rio Rancho was going to become larger?

A Yes, sir.

Q Were any changes made at the time you were informed of that with respect to the statements that were made by sales people working for you to customers for Rio Rancho lots?

A Yes, sir.

MR. ARKIN: If your Honor please, perhaps it is the form of the question.

THE COURT: Reframe the question.

Q Did the sales people say anything different--

A Yes, sir.

Q -- after Rio Rancho became larger?

A Yes.

Q What, if anything, was different?

A That as soon as the 50,000 acres was sold that there won't be any more land available.

Q You stop saying that?

A That's right.

Q During the period of time that you reported to Daniel Friedman, did you have any discussions with him about the OPC program?

A Yes, sir.

Q What were the nature of those discussions?

A They were, in general, just, you know, asking-- he just reporting what was happening and just, you know, this type of thing.

Q By the way, how often did you speak to Mr. Daniel Friedman when you reported to him?

A Oh, approximately once a week.

Q By telephone?

A Yes, sir.

Q Did you call him or did he call you?

A Both ways.

Q Was there any training manual used in connectio with the OPC program?

A We had a training manual, yes.

Q Who prepared it?

A Larry Hodgins is the one that prepared it.

Q Who is he?

A Pardon me?

Q What was his job? Who was he?

A He was running the OPC program.

Q He was working for you?

A Yes, sir.

Q Do you recall when he prepared the manual?

A Excuse me?

Q Do you recall when he prepared the manual?

A No, sir, I don't.

Q This was a manual to be used with salesmen?

A Yes.

Q Mr. Potter, I want to show you Government Exhibit 752-A for identification (handing).

Would you take a look at it carefully.

(Pause)

THE COURT: What is your question?

Q What is 752-A for identification?

A That's the -- that's the training manual that was used.

MR. DEVORKIN: I offer 752-A.

MR. FLEMING What date is it, do you know?

Q Mr. Potter, do you recall when the manual was created?

A I -- I do not.

Q Do you recall when it was used, approximately?

A The time? I don't know. Probably in 1971.

Q That's your best recollection?

A To my best recollection it would be.

MR. FLEMING: Did you thumb through this, Mr. Potter, when you identified it or did you just look at the cover?

THE WITNESS: I just briefly looked inside, yes.

MR. FLEMING: Well, do you recognize it as something that you had while you were at Rio Rancho?

THE WITNESS: I think -- I think it was, yes, sir.

MR. DEVORKIN: I will clarify it.

Q Mr. Potter, before testifying here this afternoon, have you had a chance to review this entire document carefully?

A Yes. I looked at it up in your office, too, yes.

Q You read through the whole thing at that time?

A Yes.

Q Is this the same document you looked through then?

A Yes, sir.

MR. FLEMING: Did you have this when you were at Rio Rancho, this document?

THE COURT: Excuse me?

MR. FLEMING: Did you have this document while you were at Rio Rancho?

THE WITNESS: Yes.

MR. FLEMING: As opposed to in Florida?

THE WITNESS: Yes.

MR. FLEMING: Okay. No objection.

(Government Exhibit No. 752-A received in evidence)

THE COURT: We will now adjourn until tomorrow morning at 10:00 o'clock.

Ladies and gentlemen of the jury, counsel have agreed that we shouldn't work on Friday, so you will have Friday off, but we will see you tomorrow morning at 10:00 o'clock.

(Jury left the courtroom)

MR. ARKIN: Your Honor, may we have one brief application before you leave the bench?

THE COURT: Yes.

MR. ARKIN: I understand it was only this morning that we got what purports to be the 3500 material on Mr. Potter, and yet here he is testifying --

THE COURT: You have tonight to read it. You haven't been prejudiced.

MR. ARKIN: No, your Honor, I understand it. In this particular case we have not been.

I just make the application that in the future if there is going to be the possibility of a witness on a Monday, that we be given the material on Friday as promised.

THE COURT: But you have tonight to read it, so you have the same amount of time you would have had if Potter were put on the stand tomorrow.

What are you complaining about?

MR. ARKIN: Well, I --

THE COURT: Your normal time has not been decreased.

MR. ARKIN: Well, if your Honor please, the reason I bring it up only is that we received 3500 material on two other witnesses who have not been called and we had prepared on those.

THE COURT: Well, you can prepare on him

tonight. You have from five after five until ten o'clock tomorrow morning to read his 3500 material.

MR. ARKIN: All right.

(Adjournment taken to Tuesday, November 23, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Elinor DeWitt (Resumed)		2136	2151	
Daniel Monaco	2153	2223	2269	2275
Donovan Potter	2280			

EXHIBIT INDEX

Defendant Howard Friedman and Henry Hoffman	Identification	In Evidence
BN,	2137	2137
BO	2137	
BP	2140	
BQ	2229	
BR		2269

Government	Identification	In Evidence
1401	2157	2158
379		2215
752-A		2309

UNITED STATES OF AMERICA

vs. 76 Cr. 644

AMREP CORPORATION, et al

November 23, 1976
10:00 A.M.

Trial Resumed

(In open court - jury present)

DONOVAN POTTER, resumed.

THE COURT: You may proceed.

MR. DEVORKIN: Thank you.

CONTINUED DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Potter, do you recall yesterday afternoon when we finished we were talking about the OPC training manual? Do you recall that?

A Yes.

Q Did you ever show the OPC training manual to any AMREP officers?

A It was -- it was given to, I believe, Peter Zaknich. I believe he was the person in charge at that time.

Q Did you use the OPC training manual after it was given to Mr. Zaknich?

A Yes.

MR. DEVORKIN: Your Honor, can I read from a couple of very brief portions of 752-A?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 752-A in evidence to the jury)

Q Mr. Potter, the OPC training manual makes some references, does it not, to a six month refund privilege?

A Yes, I recall seeing that.

Q How to use that, correct?

A Yes.

Q Those portions -- withdrawn.

Was this manual adopted from anything else?

A In most part it was copied from another manual. I don't recall, you know, where or how it came in being, but it was, you know, copied from that.

MR. FLEMING: I move to strike his testimony.

THE COURT: Overruled.

Q The reference to the six month provision, then, is just something that is not applicable to the OPC program?

A That's right.

Q Do you recall a brochure entitled "This Is

My Land"?

A Yes.

Q Was that used at the OPC presentation?

A To the best of my recollection, it was.

Q I believe you testified yesterday that when you were sales manager, the tour director worked for you or worked under you.

A Yes.

Q Was there any policy that was followed about what land consultants were supposed to do with the homesite owner on tour who wanted to cancel his purchase agreement?

A Well, the ATC tours, the policy was that before the land consultant would execute the cancellation for a customer that wanted to cancel, the customer would be turned over to one of the representatives of ATC, which was normally either Peter Miller or Lenny Geller or Danny Monaco.

Q By the way, when you first went to work for Rio Rancho, what, if any, real estate experience did you have?

A I had some general real estate experience in Michigan years ago.

Q Was that selling homes?

A Yes.

Q Did you have any experience in subdivided land?

A No.

Q Did you hold any kind of real estate license when you went to work for Rio Rancho?

A No, sir.

Q Did you get one after you went to work?

A No.

Q Did you hire salesmen from time to time to work for you?

A Yes.

Q Did they have any experience in real estate or subdivided land?

A Not necessarily.

Q Did they have any kind of license to work for Rio Rancho?

A No.

Q Did that include the OPC speaker?

A Yes.

Q Did they have to pass any kind of test?

A No.

Q Do you recall any occasions when field personnel, that is, sales people from the various sales offices around the country, came to Rio Rancho to be shown what would occur on a tour?

A Yes, there was such a meeting.

Q Do you recall approximately when that was?

A I believe it was someplace in 1971.

I can't recall for sure.

Q Let me show you Government Exhibit 293 for identification, and 294, 5 and 6.

(Handing)

A Yes, I recall that.

Q Did you get a copy of that memo?

A Yes, sir.

Q Who was B. D'Amour?

A Bernie D'Amour? I believe his title was Regional Manager at that time.

Q For Rio Rancho or AMREP?

A I'm not sure if it was for AMREP or Rio Rancho.

Q He worked on Rio Rancho properties?

A Yes, sir.

Q And who was Irwin Weinberg?

A I think he was just an independent broker.

Q Where at?

A I believe he was from New York.

Q Would it refresh your recollection -- well, withdrawn.

Is it possible he was from Ohio?

A Yes, it is possible, yes.

Q Who was Bernie Stoltzman?

A He was the independent broker in Wisconsin.

Q Who was Miles Lihn?

A He was an independent broker in, I believe, in Minnesota.

Q And who was Irving Roth?

A He was an independent broker in New York.

MR. DEVORKIN: I offer 293, 4, 5 and 6.

MR. ARKIN: No objection, your Honor.

(Government Exhibit No. 293, 294, 295 and 296, respectively, were received in evidence)

MR. DEVORKIN: May I just read one of these, your Honor?

(Mr. Devorkin read from Government's Exhibit 293 in evidence to the jury)

Q Did those seminars or meetings take place?

A Yes, sir.

Q Were any of the AMREP officers in attendance during that period of time at Rio Rancho?

A Danny Friedman was.

Q Do you recall yesterday at page 2303 of the transcript testifying that when Rio Rancho Estates was still approximately 50,000 acres that purchasers were told, and I quote, "As soon as the 50,000 acres were sold, then the only place anybody could buy a lot would be from somebody that already had purchased one"?

A Yes.

Q Do you recall testifying about that?

A Yes.

Q Did you personally make that statement to purchasers?

A I'm sure I had.

Q What was the reason -- what was your reason for making that statement to your purchasers?

A Well, to convince the customer that the property was a good investment and could be resold in the future.

Q Did you ever buy any lots at Rio Rancho Estates?

A Yes, I did.

Q Approximately when?

A Approximately 1969.

Q How many lots?

A One.

Q For what purpose?

A Twofold.

I intended to possibly build a home on it and live in Rio Rancho and also to -- I thought it was a good investment.

Q Did you ever try to resell it?

A No, sir.

Q When you first started to work for Rio Rancho, what was the exchange privilege?

A A half acre for a half acre into the building area.

Q When you were ready to build a home?

A Yes, sir.

Q And if the homesite owner owned more than one half acre, what happened to the rest of his or her land?

A Well, they could only take one half acre for one building. If they built two homes they could transfer more.

Q Where was the exchange area at that time?

A In part of Unit 16.

Q It was a portion of Unit 16?

A Yes.

Q Did there come a time when the exchange portion of Unit 16 became filled?

A It got pretty filled. I don't recall how many lots there were available, but for all practical purposes it was pretty filled up.

Q Did there also come a time when the exchange privilege changed?

A Yes.

Q What was the change?

MR. ARKIN: May we have a time on that, your Honor?

Q Do you recall when this was?

A I -- I don't recall the time on this, no. It was --

Q Would it be after you were sales manager?

A Yes, I believe it was.

Q Would it be sometime in 1970 or 1971?

A I would guess it was in 1971.

Q What was the exchange?

A Well, they exchanged value for value rather than, you know, size for size.

Q Was there still an area for even exchange, that is, half acre for half acre?

A Yes.

Q What area was that?

A In Unit 11.

Q Was there anything in Unit 7 at that time for half acre for half acre exchanges?

A Not to my knowledge.

Q Were there any discussions about it?

A I heard some discussions, but I don't recall of anything being done in Unit 7.

Q Was there another exchange area besides the half acre for half acre?

THE COURT: You say area. That isn't what you mean. You mean size, don't you?

MR. DEVORKIN: No.

Q I mean, is there another area of Rio Rancho Estates besides Unit 11 which was used for half acre exchanges?

A No, outside of Unit 16 half acre for half acre and Corrales Heights.

THE COURT: What about Unit 16? Was it half acre for half acre?

THE WITNESS: Yes.

Q You said 16 became filled up at some point.

A Yes, sir.

Q Did Unit 11 become the exchange area for half acres?

A Right.

Q And Corrales Heights was another exchange area?

A Right.

Q How did the exchange work when Corrales Heights was involved?

A It was value for value. The lots, as I recall, were individually priced in Corrales Heights and they ranged in size from a quarter to a third acre and, as I recall, the exchange privilege was -- they could exchange their half acre into Corrales Heights, at that time value plus whatever appreciation was accrued from the time they purchased it and apply it for the -- towards the purchase of the lot in Corrales Heights.

Q Would they have to pay any more money?

A In most instances, I think that was right.

Q They were getting either a quarter or a third of an acre lot?

A Yes.

Q Physically, how did Unit 11 compare with Corrales Heights?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A Unit 11 did not have the amenities that Corrales Heights had.

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Q What do you mean by that?

A Corrales Heights had underground utilities. Unit 11 did not.

Dirt roads.

Q Which had dirt roads?

A Unit 11.

Q What about Corrales Heights?

A That was paved. It was just nicer. Just more amenities, that's all.

Q Mr. Potter, showing you Government's Exhibit 896 for identification, do you recall that memo in any way?

A No, I don't recall it. It might possibly -- I possibly got it, but I don't recall it.

Q Do you recall whether Hugh Hood wrote such a memo?

A I don't know who wrote it. I am sure I didn't write it because it is just not the way I would write anything. I don't recall it.

Q Who was Hugh Hood, by the way?

A He was the general manager of Rio Rancho Estates.

Q Did he have any responsibility with respect to AMREP Construction Corporation?

A Yes, he was -- at one time he was owner or part owner of AMREP Construction.

Q Was that in 1970?

A I can't say. I don't know. As I recall, AMREP purchased the construction firm from Hugh Hood and another person. I can't recall the name.

MR. DEVORKIN: May I just have a moment, your Honor?

(Pause.)

Q Mr. Potter, have you had a chance to read paragraphs numbered 1 through 4?

A I haven't read it carefully.

Q Take it now and read it.

(Pause.)

A Yes.

Q Do paragraphs 1 through 4 accurately reflect Rio Rancho policy when you were sales manager?

A Yes, it did.

Q Would you read the second page of this exhibit.

(Pause.)

Q Do you recall whether the second page accurately reflects Rio Rancho policy when you were sales manager?

A I honestly don't quite understand that.

Q You are not sure about that?

A No, I don't understand what's all being said there.

MR. DEVORKIN: Your Honor, I would offer the first page of 896.

MR. FLEMING: I object.

MR. ARKIN: I object also.

THE COURT: Sustained. You can ask him questions and get answers from him.

Q Mr. Potter, the older contracts for Rio Rancho, contracts from 1963 and back that home site owners had, offered a one acre exchange, is that correct?

A Yes, I believe that's right.

Q What was Rio Rancho Estates' policy about -- what would Rio Rancho do when somebody came in and wanted to exercise their one acre exchange?

A The housing division are the ones that handled these problems. I really can't say how those were handled other than I firmly believe if someone insisted on the terms of their contract, it was honored. To my knowledge it was.

Q Was there any policy about discouraging people from using the full acre for exchange?

A I don't recall that.

Q Let me show you Government's Exhibit 896, paragraph numbered 2, and ask you --

THE COURT: That's for identification, isn't it?

MR. DEVORKIN: Yes, your Honor.

Q And ask you if that refreshes your recollection about that subject?

A Yes, sir.

Q It does refresh your recollection?

A Yes.

Q What did Rio Rancho do when somebody wanted to exchange a full acre from those old contracts?

A Well, my understanding was at that time that every effort would be made to sell them on a half acre.

Q What do you mean sell them on a half acre?

A Convince them that a half acre would be better to live on than an acre.

Q What would you convince them to do with the other half acre?

A Leave it for investment.

MR. DEVORKIN: I offer Government's Exhibit 905.

MR. ARKIN: No objection.

x (Government's Exhibit 905 received in evidence.)

MR. DEVORKIN: May I read 905, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 905 in evidence to the jury.)

MR. DEVORKIN: Mr. Clerk, can we have these marked Government's Exhibit 891-A and 891-B.

XXX (Government's Exhibits 891-A and 891-B marked for identification.)

THE COURT: Just a second.

MR. DEVORKIN: I am getting a more official marking, your Honor, that's all.

THE COURT: All right.

Q Mr. Potter, showing you Government's Exhibits 891-A and B, would you take a look at them.

(Pause.)

A Isn't this the same thing?

Q Did you get Government's Exhibits 891-A or B?

A Yes, sir.

MR. DEVORKIN: I offer 891-A and B.

MR. WEIDNER: Your Honor, may we inquire through the court what the previous numbering of what is now called 891-A was?

THE COURT: I don't know. I have a previous numbering of 891-A and an 891-B, but my notes don't show what it was because the identification didn't give a description of either of those.

MR. WEIDNER: Yes, the government remarked them A and B and they have been remarked again.

THE COURT: I have no idea of the content.

MR. DEVORKIN: Your Honor, that's correct. Both of these documents are listed on the list I think we are all using, the second page, under 891, your Honor.

THE COURT: The list we are all using. I am using the index.

MR. DEVORKIN: Yes, that's the list I am talking about. The next page over, your Honor.

THE COURT: I have no numbers on those.

MR. DEVORKIN: That's right. They are a part of 891. They weren't numbered A and B.

MR. WEIDNER: Your Honor, at the conference --

THE COURT: Why don't we go to the side bar.

(At the side bar.)

THE COURT: Yes.

MR. WEIDNER: At the conference on November 4th or 5th, 891-A and B were ruled out by your Honor.

THE COURT: That's right.

MR. WEIDNER: My problem is now that I can't tell which document they are now offering is as opposed to what it was marked before. Can you tell me, Mr. Devorkin, what document number this was when you renumbered them at the conference on November 4th?

MR. DEVORKIN: These are all a part of what was 891, your Honor.

THE COURT: You offered 891-A and 891-B separately at the conference. My notes show they were excluded. I don't know what their contents were now.

MR. DEVORKIN: I think the contents are somewhat reflective of the witness' testimony. I think they are relevant now given his testimony.

THE COURT: He doesn't know whether that's the same as he saw before or not. That's what he is asking you.

MR. DEVORKIN: I don't know, your Honor. I can't recall the conference.

THE COURT: This is a new 891-A and a new 891-B, is that what you are saying?

MR. DEVORKIN: I can't say that either, your Honor.

THE COURT: Let's get the transcript.

(Pause.)

THE COURT: Well, here it is. You people can look at it. Page 97.

MS. HYNES: Your Honor, I think we have begun to clarify it anyway. These were part of the documents that Mr. Friend gave your Honor a list and said they were patently irrelevant as to Mr. Friend.

Your Honor was ruling on relevancy as to Mr.

Friend.

The transcript reflects that for the documents that were ruled out, they were ruled on irrelevant ground.

Whether your Honor was ruling it out on irrelevant ground only with respect to Mr. Friend I don't know whether the transcript reflects that, but at this point these documents are relevant. The documents speak for themselves. I don't think they have Mr. Friend's name on it as such.

THE COURT: 891-D, according to the transcript.

MR. DEVORKIN: You are right, your Honor, it can. That's not one of the documents now marked as A or B.

THE COURT: Let's go on to what I will assume is 891-A, which is the document dated March 22, 1971 from Larry Perlmutter to ATC, Roth Realty, et cetera. Is that what you are offering now is 891?

MS. HYNES: Yes.

THE COURT: All right, that answers your question. What is being offered now is 891-A was marked 891-A and November 4th.

Now, do you have an objection?

MR. WEIDNER: The same objections as were made at that time, your Honor.

THE COURT: That was just a Friend objection?

MR. WEIDNER: That's right, I make it on behalf of Mr. Friend.

MS. HYNES: Your Honor --

THE COURT: They are talking.

(Pause.)

THE COURT: Yes.

What about 891-B, which I gather is the same.

MR. DEVORKIN: There is a slight difference. It goes to different people.

THE COURT: The point raised here was whether your present 891-A and B are the same as the 91-A and B that I previously ruled on. I assume that question is being asked so they can frame their objection.

MS. HYNES: A is the same. Now the question is B.

THE COURT: 891-B is a document, March 22, 1971 with the heading "Directed to All Rio Rancho Offices with the Exception of ATC Realty and Acres and Homes Michigan."

MS. HYNES: That's the same.

THE COURT: That answers your question. A and B are the same.

MR. WEIDNER: We renew the objections which we made at the time of the conference.

THE COURT: There is no reference to Friend in these.

MR. WEIDNER: That's right.

THE COURT: So, therefore, the objection goes out the window because originally your objection was that Friend's name was on 891 and these were attached to 891.

MR. WEIDNER: That's correct, your Honor.

THE COURT: 891 is not being offered. These are being offered as individual documents and Friend's name is not mentioned.

Your objection is overruled.

Do you have objections to these? We are ruling on these, Mr. Arkin, are you interested?

MR. ARKIN: Mr. Weidner I thought was handling it.

THE COURT: He has made his objection. I have overruled it.

Do you have any objection?

MR. ARKIN: You overruled his objection?

THE COURT: Yes.

MR. ARKIN: I will add no further objection, your Honor.

THE COURT: All right.

(In open court.)

XXX (Government's Exhibit 891-A and B received in evidence.)

MR. DEVORKIN: May I just read one of those, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 891-A in evidence to the jury.)

THE COURT: You are reading 891-A?

MR. DEVORKIN: Yes, your Honor.

THE COURT: Copies to whom?

MR. DEVORKIN: Dan Friedman --

THE COURT: It doesn't indicate that on the index. Let me see it. All right.

Go ahead.

(Mr. Devorkin read from Government's Exhibit 891-B in evidence to the jury.)

(Continued on next page.)

A.AM

MR. DEVORKIN: I offer 901.

MR. FLEMING: Objection.

THE COURT: What?

MR. FLEMING: Objection.

THE COURT: What ground?

MR. FLEMING: Foundation.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: Objection sustained.

MR. DEVORKIN: Your Honor, Government's Exhibit 905 in evidence is a similar document signed by the same person on the same stationery which defendants had no objection to on foundation.

I would ask your Honor to take a look at it.

THE COURT: You put it in through the witness, though, didn't you?

MR. DEVORKIN: No, I did not.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: Objection still sustained.

Q Mr. Potter, would you take a look at Government's Exhibit 901 for identification (handing)?

(Pause.)

Q Have you had a chance to read it?

A Yes.

Q Who was Clif Roonds?

A He was the sales manager for housing, Rio Rancho.

Q Have you seen his signature or his initials from time to time when you worked for Rio Rancho Estates?

A I don't recall.

Q Who was considered part of the sales force at Rio Rancho Estates?

MR. ARKIN: I didn't hear the question.

THE COURT: Who was considered part of the sales force at Rio Rancho Estates?

MR. FLEMING: I object to the question.

THE COURT: Did you ever see this document?

THE WITNESS: I can't recall this document, sir.

THE COURT: All right.

THE WITNESS: There were two sales forces, there was housing --

THE COURT: Wait. There was an objection.

MR. DEVORKIN: Mr. Cler, would you mark this 893-A.

XXX (Government's Exhibit No. 893-A marked for identification.)

MR. DEVORKIN: I offer 893-A.

MR. FLEMING: The same objection, your Honor; no foundation.

MR. DEVORKIN: May we approach the side bar on 893-A, your Honor?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes?

MR. DEVORKIN: 893-A I am offering without the handwriting on it, but our records show that it was company produced.

It is a memo from Marianne Newman -- your Honor will recall she was the head of customer relations -- to Hugh Hood, dated October 29, 1971. It is about a particular customer, with a cc to Clarence Commings, who was the vice president, and Clif Roonds, who was the general sales manager, and I don't believe there was any authenticity objection.

THE COURT: You didn't put it on the list.

MS. HYNES: It is on the list, your Honor.

THE COURT: I am sorry, it is not on the list.

MR. DEVORKIN: It was part of 893, your Honor. I just pulled out one of the documents.

THE COURT: It says 893 to me, not 893-A.

MR. DEVORKIN: I agree. This document is one of four or five pages of different memos that were all included and marked as 893.

I am not offering the others, I am just offering one particular page.

MR. ARKIN: I understand from Ms. Dacey this was not produced by the company.

MS. HYNES: It was produced by the company.

THE COURT: They have a list here "company produced records," which was given to me on November 9, 1976, which I was told was given to the government by the defendants the previous evening.

In this list that the government gave me, it goes to 893, period, it does not go to 893-A.

MR. ARKIN: That's right.

THE COURT: They say that this document was included in 893.

MR. ARKIN: I can rely only on Ms. Dacey, your Honor.

THE COURT: Ms. Dacey?

MR. ARKIN: Here is Ms. Dacey right here.

MS. DACEY: This weekend I was reviewing Ohio files which I received from the government, and I believe that document comes from the Ohio files, the State of Ohio files.

MS. HYNES: At this point, we have to check. I mean, we are relying upon the list that we provided to you.

THE COURT: I have an 893 here, it does not have an A, but it says 893, that does refer to this list included that document.

MS. DACEY: It may be, yes.

THE COURT: And there was no objection of 893.

MS. DACEY: At that time, that's correct.

THE COURT: All right. There was no authenticity objection made.

What is your next objection?

MR. FLEMING: My objection is the hearsay nature of the document, it can't be cross examined, it is obviously offered for the truth and it should be cross examined. They should call the witness so she can be crossed.

MR. ARKIN: She is on the witness list, your Honor.

THE COURT: Who?

MR. ARKIN: Marianne Newman.

THE COURT: I overrule your objection.

(In open court.)

XX (Government's Exhibit No. 893-A received in evidence.)

MR. DEVORKIN: May I read this to the jury, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 893-A in evidence to the jury.)

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Potter, who was Clarence Commings?

A He was general manager of Rio Rancho Estates for a short period of time.

Q Was he also an officer at some point in time?

THE COURT: Wait.

This would be after you left the company?

THE WITNESS: No, sir.

THE COURT: Weren't you the general manager?

THE WITNESS: No, no, no. I was just sales manager.

THE COURT: Go ahead.

Q Mr. Potter, did you ever attend a meeting in New York at AMREP headquarters at which the exchange privilege and unit 11 and Corrales Heights were discussed?

A Yes, sir.

Q Who do you recall being present at that time?

A It -- I don't recall the specific people, again.

Q Do you recall Mr. Carity being present?

A I believe he was.

MR. FLEMING: I object. I object to that, your honor.

THE COURT: Sustained.

Do you or don't you? If you don't, say you don't. "But I believe he was" is an equivocal he may be, he may not be.

THE WITNESS: It is to the best of my recollection he was there.

THE COURT: All right, to the best of his recollection he was there.

Q Was this meeting before or after the exchange privilege change?

A After.

Q What, if anything, do you recall Chester Carity saying about the company's policies on exchanges to unit 11 for Corrales Heights?

A I remember -- I remember a statement being made, and I'm not positive if Chester Carity --

Q Just go ahead with your answer.

A -- made the statement.

THE COURT: All right.

Hold it.

So he has now denied half your question.

Q Do you recall a statement being made, Mr. Potter?

A Yes, sir.

Q Are you sure the statement was made?

A Yes, sir.

THE COURT: What was the statement?

MR. DEVORKIN: That's why Mr. Fleming is standing up.

THE COURT: Mr. Carity was present.

Now the other question is, did Mr. Carity make the statement?

MR. FLEMING: I have not even established that Mr. Carity was present when this purported statement was made, your Honor.

MR. DEVORKIN: I am going to take it one step at a time.

THE COURT: The statement of the witness was that Mr. Carity was present, period.

I will then assume he was present during everything that happened.

There was a meeting and Mr. Carity was present. That's what the witness says.

MR. FLEMING: All right.

Q Is that correct, Mr. Potter?

A To the best of my recollection.

Q What was the statement that was made, to the best of your recollection?

A That they were going to make unit 11 look as bad as possible to encourage people to move into Corrales Heights.

Q What is your best recollection of who made that statement?

A Chester Carity.

MR. DEVORKIN: No further questions.

THE COURT: You may cross examine.

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Now, this 293, Mr. Potter, is that right?

A Yes.

Q Mr. Potter, you identified 293?

A Yes, sir.

Q Mr. Devorkin read it to the jury.

This is from Mr. D'Amour?

A Yes, sir.

Q To Mr. Irving Roth of Roth Realty, having to do with tour and sales seminar.

When Mr. Devorkin read it to the jury, he read, "We will also devote a portion of our program to dollar signs money dollar sign making topics."

The letter does have the dollar sign before money and the dollar sign before making, does it not?

A Yes, sir.

Q It also has dollar signs around housing, does it not?

A Yes, sir.

Q And those are the two places where it has dollar signs, around making money and around housing, is that correct?

A Yes, sir.

Q Is it fair to state that the emphasis on that letter was to attempt to encourage people to build homes at Rio Rancho?

MR. DEVORKIN: Objection.

THE COURT: Overruled.

A Yes, sir.

Q Your answer is yes?

A Yes, sir.

Q And that was April 5, 1971?

A Yes, sir.

Q Thank you.

Mr. Devorkin read --

MR. FLEMING: Do you have Exhibit 752-A,

please?

MR. DEVORKIN: Yes (handing).

Q I am sorry to bother you. Will you hold 752-A (handing).

That is the training -- Rio Rancho Estates OPC sales training manual, is that correct?

A It's one that was developed sometime ago, yes, sir.

Q Well, I am sorry.

A Yes.

Q Did you testify that this was Rio Rancho Estates' OPC sales training manual which you used while you were down at Rio Rancho?

A Yes, sir.

Q Okay.

And recall Mr. Devorkin read certain portions of it to the jury?

A Yes, sir.

Q Now, would you turn to page 11.

A Yes.

Q Do you recall that Mr. Devorkin referred to page 11 as containing a caption "the ten commandments of party selling."?

A Yes, sir.

Q And there are thereafter -- I won't call them commandments, but there are thereafter ten paragraphs, is that correct?

A Yes, sir.

Q And do you recall that Mr. Devorkin read paragraph 7 on page 12?

And I would read it.

Paragraph 7. "Call out a hold. Help create excitement, build up to a real sales climax."

Do you recall him reading that?

A Yes.

Q That was one of the quote, unquote ten commandments he read, is that correct?

Well, I will withdraw that.

A Pardon me?

Q I say, do you recall whether he read any of the other commandments?

MR. DEVORKIN: Your Honor, I object to this kind of questioning.

THE COURT: Sustained.

MR. FLEMING: All right.

Q Now, I want to direct your attention to paragraph 6, which immedicately precedes paragraph 7, which Mr. Devorkin read -- I am sorry.

He read paragraph 7. I want to direct your attention to paragraph 6.

Am I correct that paragraph 6 reads, "Pinpoint the most interested prospects. You qualified...you watched...you listened...you analyzed...now pick your first prospect."

"Then you take the selling position that enables you to concentrate on them first so -- you can talk to both husband and wife easily and at once.

"Or, if they're ready move them to a closing station."

Is that how that reads?

A Yes, sir.

Q Then paragraph 7 is "Call out a hold."

A Yes, sir.

Q And would you go backwards to the table of contents, which is the third page -- I don't know if it is numbered --

A Yes.

Q And then the next page there is, if I can call it, a schedule of steps to be taken in proceeding to a sale, is that correct? Would that be a fair way to describe the following?

A Yes.

Q And paragraph number 1 is, "Warm up and qualify," and it has before dinner and then it has during dinner, is that correct?

A Yes, sir.

Q And paragraph C, "During dinner. Mentally select" -- well, B is, "After meal, explain allocation sheets," right, to the customer?

A I'm sorry, I lost you on thatlast --

Q I am sorry, during dinner, B, "After meal, explaining allocation sheets."

A Yes.

Q And then C, "Mentally select allocation for each potential buyer."

A Yes,sir.

Q And that is before any hold is called, isn't that right?

A Yes, sir.

Q And paragraph 6, "Pinpoint the most interested prospects," is before any hold is called, is that right?

I am taking you forward now to page 12.

A Yes, sir.

Q So as a matter of fact, the instruction was to call a hold after you had made a determination, at least in your own mind, that a particular couple or particular individual might be interested in a particular piece of property.

A Yes, sir.

Q Then you called hold?

A Yes, sir.

Q And that was so no one else would sell the same piece of property to someone else at another table?

A Yes, sir.

Q Now, you reviewed this entire document, or Mr. Devorkin went through this entire document with you, did he not, before you testified?

A Not extensively, sir.

Q At page 15, if you can find it -- do you have page 15?

A Yes.

Q One, two, three, four, one of the instructions is, "Understate, never exaggerate," is that right?

A Yes.

Q The early contracts had an exchange privilege of one acre for one acre?

That is too quick a question.

Back in the early 1960's, am I correct that the exchange rate was one acre for one acre?

A Yes, sir.

Q That is, if you had one acre of undeveloped property, you could exchange for one acre in the developed property?

A Yes, sir.

Q Am I correct that the experience of people who did that was that one acre was too much to maintain?

A I don't recall any experience on that at all, sir.

Q All right.

Do you recall any houses out in unit 16 which were built on an acre pursuant to the exchange contract and the original contracts where people had fenced off a portion of their property?

A Yes, sir.

Q And they planted grass only in that area where they wanted to plant grass?

A Yes, sir.

Q And they fenced off the back portion of their property?

A Yes, sir.

Q So that that back portion remains essentially as it was before they moved onto it?

A Yes, sir.

Q And is it fair to say that in some respects, that is an eyesore in a community development?

A Yes.

(Continued on next page.)

Q And does that refresh your recollection that people who bought undeveloped land pursuant to the 1961 or '2 contract where there was an acre for acre exchange found that when they took a full acre and built their house on it, they really had too much land for their own purposes?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A Yes, sir.

Q Am I right? It's like cutting the lawn?

MR. DEVORKIN: I object to that and I object to asking the witness to characterize what was in the minds of customers.

THE COURT: He asked him whether that refreshed his recollection as to why they did it.

MR. DEVORKIN: But I don't think the witness can testify as to what was in the mind of a customer, your Honor.

THE COURT: That isn't what he was asked.

MR. DEVORKIN: I don't think the witness knows why the customer did something.

THE COURT: Mr. Devorkin, would you stop arguing?

Q Now, Corrales Heights had underground sewage facilities?

A Yes.

Q That was a special area of Rio Rancho?

A Yes, sir.

Q And was that serviced by a sewage system?

A Disposal.

Q Disposal system?

A Yes, sir.

Q Am I correct that underground sewage was not a part of what the homesite owner bought when he bought undeveloped land in the exchange rate?

A That's right.

Q All he bought was the right to a piece of land where he could install at his own cost a septic tank?

A Yes, sir.

Q And that is in the property reports?

A Yes, sir.

Q And at Corrales Heights, also the same is true with regard to underground telephone and other wiring?

A Yes, sir.

Q They put all that into Corrales Heights?

A Yes, sir.

Q But that was not offered in the property reports to the purchase at the dinners, isn't that right?

MR. DEVORKIN: What property reports are we talking about?

There is no evidence at Mr. Potter's dinners there were any property reports, and I don't know what Mr. Felming is talking about.

Q I was really talking about the people coming down from New York on the tours.

MR. DEVORKIN: There is no foundation for asking this witness.

THE COURT: Ask him that.

MR. FLEMING: May I read from BL in evidence, your Honor? Maybe it is not in evidence.

THE COURT: This is in relation to what?

I mean, this man is involved, I understand, in several types of sales. One was tours, one was people brought in, the OP -- whatever it was program, and people who came directly to Rio Rancho to buy.

I think you have to distinguish what you are talking about.

MR. FLEMING: Yes, I do. I was really comparing Corrales Heights.

Q Corrales Heights had underground utilities, is that correct?

A Yes, sir.

Q Had underground sewage serviced by a sewage disposal unit?

A Yes, sir.

Q Which actually took the waste and turned it into usable water which was used in the golf course and so forth.

A Yes.

Q And am I correct that whatever land you sold pursuant to whatever program you were supervising or selling land, underground utilities and underground sewage disposal was not a part of the contract?

A I don't recall that being in the contract.

Q All right.

So that if you went to Corrales Heights, you got more than you had contracted for when you bought the undeveloped land?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A I honestly -- the cost, the value dollar-wise was greater in Corrales Heights.

THE COURT: That isn't the question.

A Would you rephrase the question, please, sir?

Q I am sorry.

If you exchanged into Corrales Heights, you got underground sewage disposal instead of a septic tank, is that right?

A Yes.

Q And you didn't have to pay for a septic tank?

THE COURT: Which you would have had to do if you had transferred someplace else?

THE WITNESS: Yes.

THE COURT: So finish Mr. Fleming's question then.

MR. FLEMING: Thank you, your Honor.

Q And you also, if you moved into Corrales Heights, you would have underground utility wiring?

A Yes, sir.

Q No poles?

A Yes, sir.

Q Which you would not have if you moved -- if you just exercised your ordinary exchange right which you bought when you signed the contract?

A That's right.

Q Okay.

So if you went to Corrales Heights you got more than you had bargained for when you signed the contract?

A In that regard, yes, sir.

Q And in order to make up the difference, you had to pay some more money?

A That's right.

Q But when you exchanged your lot in, you got appreciated value, didn't you?

A Yes, sir.

Q So if you paid $750 for your half acre and that had appreciated to $2200, you got that appreciated value against a lot in Corrales Heights, didn't you?

A Yes, sir.

Q Now, you say that you have a recollection that a statement was made in New York that Unit 11 should be made to look as bad as possible in order to encourage people to move into Corrales Heights?

A Yes, sir.

Q Now, when was that statement made?

A I don't recall the time. It was one of the meetings in New York.

Q Who made that statement?

A To the best of my recollection, it was Chester Carity.

Q Now, what did Mr. Carity tell you to do to make Unit 11 to look so bad?

A This was in response -- his comment --

Q No, no.

A Can I --

Q No. I want you to tell me what Mr. Carity told you to do.

I mean, did he tell you to go out to Unit 11 and scar up the land?

A No, sir.

Q Did holes in it?

A No, sir.

Q What did Mr. Carity tell you to do to make Unit 11 look any different than it already looked?

A Nothing.

Q Thank you, Mr. Potter.

THE COURT: Mr. Arkin.

CROSS EXAMINATION

XX BY MR. ARKIN:

Q Mr. Potter, you have a bachelor's degree.

A Excuse me?

Q Do you have a bachelor's degree?

A No, sir.

Q Do you have a business administration degree?

A No, sir.

Q Did you attend business college?

A 2516

gtjw 8

Potter - cross

A Davenport Business for about two years.

Q Where you studied what?

A Accounting.

(Continued on next page)

3b

Q Afterward you sold real estate for a while in Michigan?

A Yes, sir.

Q Grand Rapids?

A Yes, sir.

Q How long did you do that for?

A Oh, approximately a year.

Q Then you came on down to Rio Rancho?

A No, I went to college and then to New Mexico.

Q Then you came down to Rio Rancho?

A Yes, sir.

Q You said during your direction examination you purchased lots at Rio Rancho?

A I purchased one.

Q Which you still own?

A Yes, sir.

Q You now live in Silver Springs, don't you?

A Yes, sir.

Q You purchased that home from AMREP Corporation, too, didn't you?

A Yes.

Q It is an AMREP built home?

A Yes, sir.

Q By the way, when you were in charge of OPC at

Rio Rancho, it was the policy, was it not, that you did not close a sale until the prospect actually saw the particular piece of property which he was interested in?

A Yes, sir.

Q But you never sold anybody any property OPC unless he had actually seen the actual piece of land they were going to buy?

A Yes, sir.

MR. ARKIN: I have no other questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Potter, do you remember Mr. Fleming asking you about the customer who exchanged into Corrales Heights getting any appreciation on his own lot credited toward his Corrales Heights lot?

A Yes, sir.

Q And he did, right?

A Yes, sir.

Q Did the Corrales Heights properties increase in price from time to time as the other properties at Rio Rancho did?

A I don't recall the pricing of the lots in Corrales Heights. To the best of my knowledge, the lots did increase. I cannot substantiate this. I don't recall any specific price increases.

Q But there were price increases that applied to Corrales Heights, too, correct?

A I am sure there were.

Q Those lots became more expensive over time?

A Yes.

Q So if a customer bought a lot in Unit 15 or Unit 23 in 1966 and later on in 1970 exchanged into Corrales Heights, he got his credit for the appreciation on his own lot, right?

A Yes, sir.

Q But during part of that time the value or the appreciation of Corrales Heights had also gone up, isn't that true?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes, sir, I am sure. I don't recall the sequence of pricing in Corrales Heights.

Q But as the customers own lot was going up so was the Corrales Heights lot?

A Yes, sir.

Q By the way, that home you own in Silver Springs Shores, have you been trying to sell it?

A Yes, sir.

MR. FLEMING: Objection.

THE COURT: Sustained. Strike the answer.

Q When you worked for Rio Rancho, where did you live, at Rio Rancho or in Albuquerque?

A I lived in Albuquerque.

Q Which part of Albuquerque?

A Snow Heights, Northeast.

Q Do you recall the movies that prospects were shown at OPC dinners?

MR. FLEMING: Object.

THE COURT: Sustained.

Q Do you recall Mr. Fleming asking you about all the things that were in Corrales Heights that weren't anywhere else on the property?

A Excuse me?

Q Do you recall Mr. Fleming asking you on cross examination about all the improvements that were in Corrales Heights but weren't other places on the property?

A Yes, sir.

Q Do you recall that question in essence?

A Yes, sir.

Q You saw the movies that customers saw, didn't you?

MR. FLEMING: Objection.

THE COURT: I will let him answer that.

A Yes, I had seen them.

Q Those movies showed portions of Rio Rancho Estates, didn't they?

MR. FLEMING: Objection.

THE COURT: What is the point of all this. The movie has been seen by all the jurors.

MR. DEVORKIN: I understand, your Honor.

A Yes.

THE COURT: Objection sustained.

Q Did Mr. Carity or any other officer of AMREP or Rio Rancho ever tell you what they were going to do to make Unit 11 to look as good as Corrales Heights?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever receive any information from AMREP about what plans there were for Unit 11?

A I don't recall.

Q Did you receive any information from them about putting paved roads in Unit 11?

A No, sir.

MR. DEVORKIN: No further questions.

RECROSS EXAMINATION

BY MR. FLEMING:

Q Was there any contractual obligation to put a paved road in Unit 11?

A Not according to the contracts that I know of.

Q Did you ever discuss that fact with Mr. Devorkin?

MR. DEVORKIN: Objection.

THE COURT: Overruled.

Q Did you ever discuss with Mr. Devorkin the fact that there was no contractual obligation to put a paved road in Unit 11?

A I believe something to that effect.

Q Your answer is yes. Something to that effect.

A Yes, sir.

MR. FLEMING: Thank you.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q When you sold lots to customers, did you show them paved roads in the area or when they saw the movies did they --

THE COURT: Wait. The people he sold lots to were the OPC people. They were there. He wouldn't sell eojw 7 Potter - redirect

them until they saw it.

Objection sustained. You may step down.

We will have a recess.

(Witness excused)

(Recess)

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(In the robing room.)

THE COURT: Who wants a conference?

MR. WEIDNER: I did, your Honor. I move to strike Mr. Potter's reference yesterday to Mr. Friend's being present at certain unidentified meetings in New York in that he couldn't identify what meetings they were, when they were or who was there.

THE COURT: Let me see it.

MR. WEIDNER: The testimony begins at page 2921 and it is clarified on 2994.

MS. HYNES: At this point the witness has been taken off the stand and we have no opportunity to go back.

THE COURT: You can always put him back if it is necessary.

MR. KAUFMAN: He is gone.

THE COURT: He says in and out. It certainly must be the period during which he was employed, which as I recall was up to '71, wasn't it?

MR. WEIDNER: That's right, at Rio Rancho, yes.

THE COURT: Motion denied.

He just says in and out. It doesn't tie him up with any activity or any statements. It is just as though he hadn't been there as far as I am concerned.

MR. WEIDNER: Yes, your Honor.

THE COURT: All right.

(In open court; jury present.)

THE COURT: Next witness.

MS. HYNES: Your Honor, the government calls William Brindle.

XXX WILLIAM EVANS BRINDLE, called as a witness by the government, after having been first duly sworn, testified as follows:

THE COURT: Go ahead.

XXX DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Brindle, where do you live?

A Presently in Milford, Connecticut.

Q How old are you?

A 36.

Q What is your occupation?

A U.S. Coast Guard.

Q How long have you been in the Coast Guard?

A 18 years.

Q How long have you -- are you stationed in Connecticut?

A Yes, New Haven.

Q What do you do with the Coast Guard?

A Presently I'm the electronics material officer for that area.

Q How long have you been stationed in Connecticut?

A A little less than two years.

Q Prior to that where were you stationed?

A Philippines.

Q How long were you stationed in the Philippines?

A Three years, eight months.

Q Are you married?

A Yes.

Q Do you have children?

A Two.

Q How old are your children?

A Boy 12, girl 3.

Q Did you buy any land at Rio Rancho Estates?

A Yes.

Q When did you buy the land?

A April, '72.

Q Where were you stationed in April of 1972?

A Philippines.

Q How did you first learn about Rio Rancho?

A From the salesman.

Q Can you describe to the court and the jury the circumstances of your buying land at Rio Rancho?

A The salesman came to my house.

Q How did the salesman come to your house, if you know?

A I assumed that he had access to the embassy telephone directory. Most of the Philippine nationals did.

Q Who was the salesman who came to your house?

A I don't recall his name. He was a Philippine national.

Q Did he make prior contact with you prior to showing up at your house?

A No.

Q He just rang the door bell?

A Rung the door bell.

Q Then tell us what happened.

A Well, we invited him in and he presented his spiel.

Q What do you recall that the salesman said to you about Rio Rancho land?

A He showed maps. He showed brochures. He even had a graph, homemade, I think, showing the land versus stocks versus savings in a bank. He presented it as an investment.

Q What do you recall -- can you describe to the jury what the graph looked like?

A Simply a line with three markings on it. The first one at 6 per cent level, a line going up to roughly 12 per cent, if I recall, for stocks, bonds, what have you, and then progressing on up to the 25 per cent level, I think is what he presented, for the land.

Q What did the 6 per cent figure, the 12 per cent figure and the 25 per cent figure represent?

A The point he was trying to make was that land was thebetter investment of the three.

Q Were these the per cents of returns on the various types of investments?

A Yes, I think that would be right.

Q What was the 6 per cent return, on what type of investments?

A If you put money in savings in a bank.

Q What was the 12 per cent return?

A If you went down the stock market and bought stocks.

Q What was the 25 per cent return?

A Land.

Q Do you recall what else he said about Rio Rancho land?

A He presented it as being in the path or the only path in which Albuquerque could grow.

Q You mentioned that he showed you a map. Do you recall what was on the map?

A It was similar to a topographical type map where it showed the mountains. It showed the national parks. In other words, it showed Albuquerque almost surrounded except in this one direction.

Q What was in the one direction where it was not surrounded as it showed on the map?

A Rio Rancho.

Q What did he say when he showed you that map?

A Well, he presented it, you know, as Albuquerque being a growing, progressive city and, again, if it's going to grow, it can only grow in one direction and you buy land in that directionk you have got a good investment.

Q Did you buy land from this salesman?

A Yes.

Q What was your reason for buying the land?

A Investment.

Q Did you ever intend to relocate to New Mexico?

A No.

Q I show you what has been marked as Government Exhibit 144-A for identification and 144-B for identification. Directing your attention to 144-A for identification, do you recognize this?

A Yes, that's the contract that I signed.

Q Does your signature appear on this contract?

A Yes.

Q And on the front of the page of 144-A do your initials also appear on the contract?

A Yes.

Q Showing you 144-B for identification, can you recognize that?

A Yes.

Q Does your signature appear on that?

A Yes.

MS. HYNES: I offer 144-A and B.

MR. ARKIN: No objection.

XX (Government Exhibits 144-A and 144-B received in evidence.)

THE COURT: Let me see them.

(Pause.)

THE COURT: All right.

MS. HYNES: Your Honor, may I read from a portion of these documents?

THE COURT: Go ahead.

(Ms. Hynes read from Government's Exhibits 144-A and 144-B in evidence to the jury.)

Q Mr. Brindle, I direct your attention to Government Exhibit 144-A in evidence, which is the purchase contract, and in particular direct your attention to the paragraph where your initials appear. That paragraph reads:

"I/we acknowledge receipt of copies of restrictive covenants, the property report filed with the office of Interstate Land Sales, Registration U.S. Department of Housing and Urban Development and any applicable public report, offering statement or prospectus required by state authorities."

Do your initials appear next to that paragraph?

A Yes.

Q I am going to show you what has been previously marked Defendant's Exhibit BI in evidence, which is a property report, dated March 9, 1972. Do you recognize that property report?

A No. I never seen it.

Q Did you ever see a property report similar to that?

A No.

Q Did you ever see a property report?

A No.

Q Do you recall what the circumstances were in putting your initials next to that paragraph in the contract?

A No, I don't, not specifically.

Q Can you recall any conversation with your sales person in connection with placing your initials on the contract? Give us your best recollection.

A. As far as I can recall, he passed it off as a technicality or, you know, something that I just had to do. To the best of my knowledge, I really can't tell you for sure why I did that. I did not see the thinking involved there.

Q You are referring to the property report?

A Yes.

Q Are you still making payments on your contract, Mr. Brindle?

A Yes.

Q I show you Government Exhibit 144-E for identification. I ask you if you can identify the handwriting on that.

A Yes, it's my wife's.

Q Is it your wife's handwriting on the second document?

A Yes.

MS. HYNES: I offer 144-E.

MR. ARKIN: No objection.

XXX (Government Exhibit 144-E received in evidence.)

MS. HYNES: Your Honor, may I read from a part of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 144-E in evidence to the jury.)

Q Mr. Brindle, do you know how many years your contract requires payments?

A I believe it was seven.

Q I believe you testified you are still making payments on that contract?

A Yes.

Q Do you recall how much you have paid to date, approximately?

A Roughly $2,000, I believe.

Q At the time that you purchased your land at Rio Rancho Estates, did you know how many acres Rio Rancho was?

A You mean by lot or the total?

Q The total subdivision.

A No.

(Continued on next page.)

Q At the time that you purchased your land at Rio Rancho Estates, did you know how many acres the city of Albuquerque was?

A No.

Q What, if anything, did you expect to do when you completed making payments on your contract?

A Sell it.

Q Have you made any attempts thus far to sell your land at Rio Rancho?

A No.

Q Do you recall when your payments are up when you complete your payments?

A It will be roughly three more years.

MS. HYNES: I have no further questions, your Honor.

X CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Brindle, my name is Stanley Arkin.

Do they refer to you as a mister or an officer, sir?

A Mister,normally.

Q You are a warn officer?

A Yes, sir.

Q And you have been in the Coast Guard for 18 years?

A Yes.

Q And you now deal with the electronic equipment acquisition or something like that?

A Not the acquisition, the maintenance and repair of it.

Q The technical aspects of equipment, then?

A Yes, sir.

Q Of electronic equipment?

A Yes, sir.

Q Are you trained in that, aside from the Coast Guard?

A Not from the Coast Guard, no -- only from the Coast Guard, excuse me.

Q Before you went to the Coast Guard, what was the extent of your education?

A High school.

Q And you went right from high school to the Coast Guard?

A Yes.

Q And then you rose in the ranks to become a warn officer?

A Yes.

Q Do you have men under your command?

A Yes.

Q How many?

A Roughly, 24.

Q And is it part of your responsibilities occasionally to cut orders?

A No.

Q Do you know what I mean by cut orders, don't you?

A Maybe you better explain. I have a meaning.

Q Well, in the military, when you cut orders, that means making orders for making people be somewhere --

A That is handled by the personnel office.

Q You certainly have a lot of experience in reading them, haven't you?

A Somewhat.

Q And I take it, also, you have had a lot of experience in reading the technical descriptions of the property or of the equipment over which you have responsibility?

A Yes.

Q And you have to read some of those things pretty closely, because they are pretty technical, don't you?

A Yes.

Q Going back to that time in the Philippines when

Mr. Luchango -- is that the name of the salesman?

A I don't recall his name.

Q He was a Philippine national, though?

A Yes.

Q And he came to your house at that time, I take it?

A Yes.

Q I take it he had no difficulty speaking English?

A No.

Q He came in and told you about Rio Rancho?

A Yes.

Q And he showed you certain documents?

A Documents pertaining, like, brochures and stuff like that.

Q And he showed you the contract you signed, didn't he?

A Documents, yes.

MR. ARKIN: May I havethat, Ms. Hynes?

MS. HYNES: The contract?

MR. ARKIN: Yes.

(Pause.)

MR. ARKIN: Excuse me, it's up here.

Q Good, Mr. Brindle.

This is a copy of the contract you signed, am

I right?

A Yes.

Q And you knew when you were signing it, you were committing yourself to purchase land for $3,000?

A Yes.

Q Which I'm sure you considered a very serious transaction, am I right?

A Yes.

Q And you are somebody who has certain responsibilities in the military and you know that when you commit yourself to do something you got to do it, that is legally, am I right?

A Yes.

Q And so when you signed this, you must have read it, didn't you?

A Yes.

Q And when you read it, you observed that paragraph next to which you placed your initials acknowledging the receipt of a certain report, am I right?

A Yes, I put my initials on that.

Q If you had an entitlement to receive a certain report which had to do with your $3,000 purchase, are you saying that you put your initials there only as a technicality, or that you don't really remember whether you received the report or not?

A I put my initials on there and received no report.

Q Did you ask anybody for it?

A No.

Q But you knew that you acknowledged receipt of that report?

A At that time I didn't know it was a report per se.

Q Would you care to read this paragraph?

A It's already been read once, so why read it again?

Q It says here you acknowledge receipt of copies of restrictive covenants, the property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, and then the other applicable public reports and so forth.

You say you acknowledged receipt of a particular report?

A That's what it says, yes, sir.

Q You understand it to mean that, don't you?

A I understand it to mean that.

Q And you are saying on this particular document which obligated you to pay $3,000, you put your initials there only as a technicality?

A That's what I'm saying, sir.

Q When you purchased this land, you say you purchased it as an investment?

A Yes.

Q A lont term investment, isn't that so?

A Yes.

Q That's what you understood it to be, a long term investment?

A Seven years is long term.

Q No. I am asking you whether it was long term. Am I correct in that?

A Yes,sir.

Q When you bought this in 1972 -- strike that.

From the time you bought this in 1972 up to the present time, you continued to make your payments, have you not?

A Yes.

Q You made them every month?

A Yes.

Q You came back from the Philippines what date?

A ABout the 4th of January, 1975.

Q And you continued making payments after you came back to the States?

A Yes.

Q By the way, did you ever visit Rio Rancho?

A No.

Q Did you ever make any arrangements to visit Rio Rancho?

A No.

Q Your only contact with the company, I take it, during the time from the time you purchased it up until the present time has been making those payments, is that a true fact?

A Not completely, no.

Q Well, have you communicated with the company aside from sending them checks?

A I haven't communicated with them, they have communicated with me.

Q I mean, you received letters from time to time?

A Letters, stuff like that, brochures.

Q But your efforts to communicate with the company has been confined to sending them checks every month?

A My efforts, yes.

Q When was it that you first met Ms. Hynes?

A This morning.

Q When was it the first time you spoke to Ms. Hynes? Was that this morning, also?

A No. That would have been the night before last, I think.

Q By telephone?

A By telephone.

Q Do you recall when it was that you first communicated with the federal government regarding your testimony here today?

A Four to six months ago, possibly, by letter.

Q And you were making your payments year in and year out up through, say, the end of 1975, last year, isn't that so?

A Would you repeat that, please?

Q You continued to make your payments, as you said, from the day you bought it up to the present time, including through the end of last year?

A Yes.

Q And last year you read something about this very case in the newspapers, am I correct about that?

A Yes.

Q And you became concerned and you wrote to the U.S. Attorney here in New York, am I correct?

A Yes.

Q Inquiring what impact, if any, this case would have upon your land investment in Rio Rancho, is that so?

A Yes.

Q You were concerned about the impact of this case in which you are testifying on alnd at Rio Rancho, isn't that a fact?

A Yes.

MS. HYNES: Asked and answered, your Honor.

MR. ARKIN: I have no other questions.

CROSS EXAMINATION

BY MR. FLEMING:

Q When you purchased this property, you gave an address in Ohio?

A Yes.

Q When you came back to the U.S., you traveled throughout the U.S. for two and a half months before you reached your present station?

A No.

Q Did you travel for two and a half months after you left the Philippines before you reached your present station?

A No.

Q You say you spoke to Ms. Hynes for the first time the day before yesterday?

A If I'm not mistaken, it was Sunday night.

Q Had you not, in fact, received several phone calls from the prosecutors in this case prior to September 14, 1976?

A I have had several. I don't recall specifically if it was Ms. Hynes. I mean, there was men, too.

(Continued on next page.)

Q Was it Ms. Hynes, also?

A I really can't say, because some of the conversations were to my wife when I was not there.

Q In any event, the prosecutors in this case have been in touch with you well before this past Sunday?

A Yes, yes.

Q In fact, they were in touch with you several times prior to September 14, 1976?

A Yes, I think so.

MR. FLEMING: May I have just one moment, your Honor?

(Pause)

Q You are presently stationed U.S. Coast Guard Group, Long Island Sound, 120 Woodward Avenue, New Haven, Connecticut?

A Yes.

Q Did you, on or about March 10, 1975, write to Rio Rancho "To Account Representative: As you can see, we have recently moved from the Phillippine Islands to Connecticut. We have been traveling for two and one half months during that time"?

A I didn't write it, sir. Possibly my wife did.

Q Was your wife telling the truth about

traveling for two and a half months before that time?

A No.

(Defendant Chester Carity and Daniel Friedman Exhibit BS marked for identification)

Q I direct your attention to BS for identification, to this portion down here, and just ask you, yes or no, is that your handwriting?

A No.

Q Is it your wife's?

A My wife's, I think.

MR. FLEMING: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Brindle, do you recall Mr. Arkin asked you on cross examination whether you purchased your land as a long term investment and you said yes?

A Yes.

Q What is a long term investment to you?

A The seven years it takes to pay for it.

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

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MR. KAUFMAN: The government calls James Davis.

JAMES DAVIS, called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

XX

BY MR. KAUFMAN:

THE WITNESS: James C. Davis, I live at Port Jefferson, Long Island, New York.

Q Mr. Davis, how old are you?

A Seventy-four years.

Q And where do you live?

A Port Jefferson, Long Island.

Q Are you married?

A Yes, sir.

Q Do you have any children?

A Yes. I have three grandsons and two granddaughters.

Q And how many children?

A Five.

Q Five grandchildren or five children?

A Five grandchildren.

Q How many children?

A I personally --

THE COURT: When you have grandchildren you ignore your children.

A I have two children.

MR. FLEMING: Your Honor, then I can't wait.

THE COURT: I have five so I know.

Go ahead.

A I have two children, a girl and a boy.

Q Are you employed, Mr. Davis?

A Pardon?

Q Are you employed?

A No, I'm retired.

Q And how long have you been retired?

A I retired 1967.

Q A nd what type of work do you do?

A Operating engineer, heavy equipment.

Q And how long were you engaged in that type of work?

A Thirty years.

Q What is your educational background?

A Eighth grade.

Q Do you own any lots at Rio Rancho Estates?

A Yes, sir.

Q And what type of lots do you own?

A I have a half acre of residential and I have two lots multiple dwelling eight and nine.

Q Do you recall when you first had any contact with Rio Rancho Estates?

A It was in 1971.

Q What was the nature of that contract?

A We went to a dinner.

Q How did you hear about the dinner?

A We were sent cards.

Q You received a card in the mail?

A Yes.

Q And did you go to that dinner with anyone?

A Yes.

Q Who did you go with?

A My wife.

Q And do you recall where that dinner was?

A Pardon?

Q Do you recall where the dinner was?

A Yes. It was at the Elks Hotel in Port Jefferson.

Q Do you recall how many people were seated at your table?

A There was just my wife and the salesman -- my my wife and I and the salesman.

Q And do you recall about how many other people were at the dinner?

A Approximately ten -- nine or ten couples, I would say.

Q Can you tell us, to the best of your recollection, what occurred during that dinner?

A Well, we were shown some movies of Rio Rancho Estates, it looked lovely, and we were talked -- they talked about it considerably, and there was some gentleman got up there and described the area of property and so on and so forth.

Q Was this a man who spoke from the front of the room?

A Yes.

Q Do you recall some of the things that that gentleman said?

A Recall some of the things?

Q Yes, that were said from the front of the room.

A Well, he talked about how beautiful it was at Rio Rancho and all those things. That's about all I recall.

Q Do you recall anything being said about Albuquerque and Albuquerque's growth?

MR. FLEMING: Objection.

A Well, he did say --

THE COURT: Overruled.

A He did say the growth was immense out there, that they were growing up very rapidly.

Q And did he say anything about the direction of Albuquerque's growth?

A No, I don't recall that.

Q Do you recall anything being said about mountains and Indian reservations and government land?

A Yes. I believe he mentioned something about three sides of it were surrounded by mountain area.

Q Three sides of what?

A Of the property, of the Rio Rancho property.

Q Do you recall whether or not he was referring to Rio Rancho or to Albuquerque?

A I don't understand you.

Q When you say that the man referred to mountains and Indian reservations and government land surrounding the area, was he referring to Albuquerque so surrounded or Rio Rancho so surrounded?

A I presume he was referring to Rio Rancho.

Q And were you told at that dinner how big Rio Rancho was?

A Did he tell how big it was?

Q Yes, in terms of acreage.

A I really don't recall whether he did or did not.

Q Did you buy land at that dinner?

A Yes, I did. I bought a half acre.

Q I show you what has been marked Government's Exhibit 128-G for identification and ask you if you can identify that.

A I will put my specs on. I don't see as good as I used to.

Yes, I believe this is what I signed.

Q Is this the reservation and purchase agreement you signed at that dinner?

A Yes, a copy of it.

Q Yes.

A Yes.

MR. KAUFMAN: The government offers 128-G.

MR. FLEMING: No objection.

(Government Exhibit 128-G was received in evidence)

MR. KAUFMAN: May I just refer to a portion of this, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 128-G in evidence to the jury)

Q Mr. Davis, what was your reason for buying that half acre of land?

A Well, my wife was troubled with arthritis and we thought out in the dry climate would be a nice place to maybe settle, build a house.

Q Did there come a time when you visited Albuquerque and Rio Rancho Estates?

A Yes, there was.

Q And approximately when was that?

A That was in April [illegible] believe.

Q And how did you go to Albuquerque?

A Pardon?

Q How did you go to Albuquerque?

A By airplane.

Q Was this by yourselves or on some company --

A No. It was a group. A group of people.

Q Who comprised this group of people?

A There were 20 or 25 people, I would say.

Q Were these all Rio Rancho lot owners?

A Were they all?

Q Yes.

A I presume they were, yes, otherwise they wouldn't be going out there.

Q Did you pay for this trip?

A I did, yes.

Q How much did it cost?

A As I recall, it was about $450.

Q For yourself and your wife?

A Yes.

Q How long was this tour?

A I think we were there five days.

Q Do you recall where you stayed when you were in Albuquerque?

A Do I recall what?

Q Do you recall where you stayed on this tour, where you were lodged?

A Oh, we were lodged in their motel there, the Panorama, I believe.

Q At Rio Rancho Estates?

A At Rio Rancho Estates, yes.

Q Can you just briefly tell us what you did during this tour?

A What we did?

Q Yes.

A Well, they had their own buses. They took the group around and showed them all around Albuquerque and the Indian reservations and so on and so forth. Up the Siandia Mountain.

They entertained us really good.

Q Did there come a day when you were taken to see your property?

A I think it was the day before we were going to leave, as I recall.

Q Where were you taken that morning?

A Well, we went up with a car about twenty minutes or so from their main office up on the plateau or up in the fields where the cattle were still grazing.

Q Are you talking about when you went to see your property?

A Yes.

Q Before you were taken to see your property, were you taken anywhere else before that?

A No -- well, we were taken around the different areas around Albuquerque and around Rio Rancho, yes.

THE COURT: He means that morning, Mr. Davis.

THE WITNESS: No. Thank you, your Honor.

Q Do you recall being taken to the property office at Rio Rancho Estates where somebody talked to you for a little while?

A Oh, yes, I am sorry, yes, we did. The morning of the day before we left, yes.

Q After you were taken to the property office, were you then taken out to your property or were you taken somewhere else at that point?

A No, in the afternoon -- there was different groups, they had several cars and they were taking different groups at different locations evidently on the property they had bought and we were taken out in the afternoon.

Q Were you in the first group to go out to see your property?

A No, no.

Q In the afternoon when you were taken out to see your property, can you tell us what happened?

A Well, they took us up the road about 20 or 25 minutes --

Q Let me interrupt you.

A Yes.

Q In what type of vehicle did you go to see your property?

A A touring car.

Q An automobile?

A An automobile, yes.

Q Who was in the car?

A A land consultant. He drove the car.

Q And yourself and anybody else?

A No, just my wife and myself.

Q He drove you to your half acre lot, is that right?

A Yes.

Q About how long did it take to get to your half acre lot?

A Well, I would say about 20 minutes.

Q This was --

A Approximately.

Q This was Unit 25, is that right?

A Yes, sir.

Q What happened after you were taken to see the lot that you had previously purchased?

A Well, we took a look at it. There was a lot of cactus and cattle grazing on the area. There was no roads. There was no improvements whatsoever. That is about all.

We looked at the thing. The salesman said, here's the lot, they had two or three stakes driven in the ground.

Q Did you say anything to the salesman at that time?

A Not too much, no.

Q Were you taken anywhere else after that?

A Yes, he took us around a little bit more and took us down to the multiple dwelling lots and said this was going to be one of the next things to be developed and we bought two lots down in that area.

Q What did your salesman say about the multiple dwelling lots?

A What did he say about that?

Q Yes.

A They were going to be developed and he thought it would be a good investment.

Q Did you buy the two multiple dwelling lots?

A Yes, I did

Q I show you what has been marked 128-H for identification and ask if you can identify that?

A Unit 10, 8 and 9, yes.

Q Do you see your signature on it?

A Yes, that is my signature and my wife's signature, you are right.

Q Is this the contract for the two multiple dwelling lots?

A Yes, 8 and 9.

Q That is lots 8 and 9?

A Yes, lots 8 and 9. Two lots.

MR. KAUFMAN: The government offers 128-H.

MR. ARKIN: No objection.

(Government Exhibit 128-H received in evidence)

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MR. KAUFMAN: If I may just refer to a portion of this, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 128-H in evidence to the jury)

Q Mr. Davis, do you know how long this contract ran for in terms of how long it would take to fully pay for all the land?

A How long it would take?

Q Yes.

A No, I really don't.

Q Are you still paying for your half acre residential and your two multiple dwelling lots?

A Yes, sir.

Q Have you made every payment since you first bought the land?

A Have I made every payment?

Q Yes.

A Yes, sir. It has been a little rough sometimes, but I have made them.

Q At the time you went to Rio Rancho and after you saw your property, did you still believe that you would move to Rio Rancho?

A Yes, we had that thought in mind.

Q After you were there, did you continue to believe that you would move there?

A Yes, we did because we were told that they were going to develop it.

Q Were you told how soon your land would be developed?

A That would be the next unit that would be developed in the half acre.

THE COURT: That is the original purchase?

THE WITNESS: Yes, sir.

Q So I gather, then, that you indicated you were satisfied with the half acre that you had previously purchased, is that right?

A Yes, with the understanding it would be developed in the very near future.

Q Did there come a time when you tried to resell some of the land that you had previously purchased at Rio Rancho?

A Yes. My wife had had several operations and we were strapped for money and we wrote to them and asked if it would be possible to resell the multiple dwelling lots.

Q When you had been out at Rio Rancho, had you been told anything about the resale of your lots?

A It was our understanding --

THE COURT: Wait.

MR. ARKIN: Your Honor, objection.

THE COURT: You were asked what you were told, not what your understanding was. You have to tell us what somebody told you.

THE WITNESS: Yes.

Q Was anything told to you about resale of your lots?

A Was anything told to us about it?

Q Yes.

A That it would be a good investment, yes.

Q When you say a good investment --

MR. ARKIN: If your Honor please, I move to strike the answer.

THE COURT: Overruled.

Q When you say a good investment, are you referring to something that you could resell at some time?

A Yes, that was our understanding.

Q Was anything told to you with respect to the company's ability to resell your land?

A I don't recall that.

Q I believe you said you wrote to the company when your wife took ill, is that right?

A Yes.

Q I show you what has been marked Exhibit 128-E for identification and ask if you can identify that handwriting.

A My wife does all my correspondence.

Q Is this your wife's handwriting?

A Yes, it is.

Q Is that the letter she wrote to the company requesting the resale?

A This letter here, yes.

Q Referring to the first page of 128-E, can you identify that?

A Yes, I can.

Q What is that?

A Pardon?

Q What is that?

A It's a letter we got from Rio Rancho that --

Q Without telling us what it says --

THE COURT: Was that in response to your written letter?

THE WITNESS: Yes, your Honor.

MR. KAUFMAN: The government offers 128-E in evidence, your Honor.

MR. LAUER: We have no objection.

(Government's Exhibit 128-E received in evidence)

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THE COURT: Let me see it.

(Pause)

THE COURT: All right.

MR. KAUFMAN: If I may read 128-E, your Honor.

THE COURT: Yes.

Q By the way, Mr. Davis, do you recall the name of your salesman at Rio Rancho?

A At Rio Rancho?

Q Yes.

A Yes, his name, I believe, was Mr. Martinez.

(Mr. Kaufman read from Government's

Exhibit 128-E in evidence to the jury)

Q Did there come a time, Mr. Davis, when your monthly payments to the company were reduced?

A Yes, sir.

Q Do you recall what the amount of the reduction was?

A The half acre lots, which were $34 in the beginning, was reduced to $20 a month.

The multiple dwellings were $72 a month to begin. They were reduced down to $58 a month.

Q Did your total purchase price, though, remain the same?

A Yes.

Q Have you continued to make the payments at the reduced monthly rate?

A Yes sir.

Q I show youwhat has been marked Government Exhibit 128-F for identification and ask if you can identify that.

A Yes, I can. I received this letter Rio Rancho.

MR. KAUFMAN: Your Honor, the government offers 128-F without the handwriting.

MR. LAUER: Your Honor, one question, please.

VOIR DIRE EXAMINATION

BY MR. LAUER:

Q Do you recall when you received this letter?

A Not right offhand. It was sometime ago. I just don't know the date. I don't know the exact date.

THE COURT: Is there a date on it?

MR. LAUER: I don't believe so, your Honor.

THE WITNESS: It is a sort of a form letter.

MR. KAUFMAN: The body of the letter refers to a date, your Honor.

THE COURT: Let me see it.

MR. LAUER: That is correct.

THE COURT: Any objection?

MR. LAUER: No objection.

(Government Exhibit 128-F received in evidence)

MR. KAUFMAN: If I may read this to the jury, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 128-F in evidence to the jury)

Q Did you purchase any additional land, Mr. Davis?

A No, sir. I had enough.

MR. KAUFMAN: May these be marked 128-I and J.

(Government Exhibits 128-I and J marked for identification)

Q Mr. Davis, I show you what have been marked Exhibits 128-I and J for identification and ask if you can identify them.

A Yes, sir. That is my signature of those two checks.

Q Do these checks reflect the monthly payments on your lots at Rio Rancho?

A Yes. This is December 6th, '75. Yes, it does.

Q Is this at the reduced monthly rate?

A Yes, it is.

MR. KAUFMAN: The government offers 128-I and J.

MR. LAUER: No objection.

(Government Exhibits 128-I and J received in evidence)

THE COURT: We will adjourn for lunch. Return at 2:15.

(Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In the robing room; counsel present.)

MS. HYNES: Your Honor, I just wanted to advise the court that after Mr. Davis finishes -- Mr. Kaufman does not have very much more on direct, just a few more questions, then cross examination -- we do have another witness to put on. She is not here. She has been delayed, but we expect by the time Mr. Davis is finished cross examination she will be here. She is also a consumer.

I am not sure how long her testimony is going to take, but she is the last witness we would have to call this afternoon. Our other witnesses went faster.

We did ask the court, and we have not done it as of yet, to give the jury the property reports to take a look at.

We may go to 5:00, given the examination of the remaining witnesses plus the jury looking at the property reports, but I just wanted to advise your Honor that it may fall somewhat short.

THE COURT: Give the property reports to the clerk now so he can give them out during the recess.

MR. ARKIN: May we know what witness is on the way?

MS. HYNES: Mohammed.

MR. ARKIN: Which property reports do you intend to hand out, Ms. Hynes?

MS. HYNES: There are copies that were made and they are waiting there. I don't know offhand, but I will show them to you when we leave here.

MR. FLEMING: Judge, I believe a juror's relative is sitting in the courtroom.

I have never had that situation before.

MR. RUBINO: Juror No. 7's, I assume, wife. He brought her in. I saw him seat her down.

THE COURT: There is nothing I can do about it. She is part of the general public.

MR. FLEMING: I don't have any application, Judge. It has never happened before.

THE COURT: We had one in September where we think the juror held out because the wife was in the courtroom.

MR. FLEMING: Which way, Judge?

THE COURT: It ended up with a verdict.

MR. ARKIN: I don't think anything can be made of that.

MR. RUBINO: No. I just think we should exercise caution by not talking anywhere near her.

MR. FLEMING: That is true.

THE COURT: All right.

(In open court; jury present.)

XXX JAMES C. DAVIS, resumed.

MR. KAUFMAN: May I continue, your Honor?

THE COURT: You may.

XXX DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Davis, I believe you identified these as two checks representing your monthly payments to Rio Rancho, is that right (handing)?

A Yes, sir, that's correct.

Q How did you send these checks in?

A By mail with an envelope provided by Rio Rancho.

Q And do you recall where the envelope was addressed to?

A I believe it was in New York here some place. The Chemical Bank, I presume -- I believe it was Chemical Bank.

Q Here in Manhattan?

A Yes. I could have brought the information had I known you wanted it.

MR. KAUFMAN: No further questions, your Honor.

A All right. Thank you.

CROSS EXAMINATION

BY MR. LAUER:

Q Mr. Davis, my name is Elliot Lauer. I am with the defense.

You live in Port Jefferson, Long Island?

A Yes, sir.

Q You own your own home there?

A Pardon?

Q You own your own home?

A Yes.

Q And you have lived on Long Island for several years, have you not?

A Well, yes. All my life.

Q You had a house in Mount Sinai, Long Island?

A That's correct, known as Davis Island Boatyard. It's been in my family for 200 years.

Q You sold your house --

A Pardon?

Q You sold your --

A I can't hear too well. I'm not as young as I used to be. I'm sorry.

Q You sold your home in Mount Sinai 12 years ago?

A About 1964, yes, that's correct.

Q How much did you sell it for?

A Pardon?

Q What was your selling price?

A What was the selling price?

$80,000.

Q How much did that house cost you when you bought it?

A I inherited it.

Q What did you pay for your home in Port Jefferson?

A How much did I pay for it?

Q Yes, sir.

A $16,000.

Q What would you say the value of that home is today?

A Pardon?

Q What would you say the value of your home is today?

THE COURT: You have to keep your voice up, Mr. Lauer.

A I can't hear too well.

Q What would you say the value of your home is today?

A Possibly $30,000. I've invested quite a bit in my home in Port Jefferson.

Q Over the years, you have seen development in Long Island?

A Yes, I have.

Q And you have seen the value of your property increase?

A Yes, I have.

Q You bought you first property in 1971?

A Yes, sir.

Q That was unit 25?

A Yes, sir.

Q Residential lot?

A Yes, sir.

Q And you were going to use that to retire?

A Well, I was going to use it for a home site, yes. That's why I bought it.

Q When you went to the dinner party, you received some literature that night?

A Did I what?

Q You received some literature the night you went to the dinner party that you bought the lot?

A I received some pictures of Rio Rancho. That's about all I recall.

Q Do you recall receiving the property report?

I am showing you Defendant's Exhibit AN which is now in evidence.

A I don't recall that.

MR. LAUER: Do you have the contract, Mr. Kaufman?

MR. KAUFMAN: Yes (handing).

MR. LAUER: Could you mark this, please.

XXX (Defendant ATC Realty Corporation Exhibit BT was marked for identification.)

Q Mr. Davis, I am showing you Exhibit BT for identification (handing).

Can you identify that for us?

A It looks like the first contract.

Q That is the first contract, unit 25?

A I believe so, yes. That's what it says there.

Q And that is your signature (indicating)?

A Yes, sir.

Q Are those your initials?

A I believe they are.

Q Does that refresh your recollection that you received a property report the night that you attended that dinner?

Do you care to read that, sir?

A I don't recall it if I did.

I don't recall it, sir.

Q Those are your initials?

A I believe they are, yes. JD, isn't it, on there?

Q Yes.

A Yes.

Q You testified that you visited Rio Rancho in April of 1972?

A Yes.

Q And you were taken out to your lot in unit 25?

A That's right.

Q And was it a 20 minute ride by car?

A I would say it was approximately 20 minutes, yes.

Q You started out in the developed area?

A I started out from the office of Rio Rancho there.

Q And there were houses near the office?

A Yes, there were houses there.

Q There was a development?

A Yes, that's right.

Q The car ride was 20 minutes.

Were you constantly passing houses and developed areas on your way out to unit 25?

A As I recall, not too many houses along that area of the road that we traveled on.

There may have been some there, but I didn't recall too many houses.

Q Was unit 25 developed?

A No, it was not.

Q No houses?

A Not where I was -- where my property was, absolutely not.

Q Could you see any houses from your property?

A Absolutely not. All I saw was cattle. Cattle and cactus.

Q Could you see the developed area of Rio Rancho?

A Could I see it?

Q From unit 25.

A I don't think so, no.

(Continued on next page.)

GTjw 1 Davis - cross

Q Could you see Albuquerque?

A I could see Albuquerque.

Q Could you see the Siandia Mountains?

A Yes.

Q But you couldn't see the developed area of Rio Rancho?

A I could see the cattle grazing on the lots. I'm sorry, gentlemen, but that's the way it is.

Q I take it, then, you were able to make your own judgment as to how close the development was to Unit 25?

A Well, as it seemed to me, it was quite a long time -- quite a long way away from there.

Q Quite a long way away from it?

A Quite a long way, yes. I wouldn't say it was a mile or two; three miles maybe.

Q While you were out at Rio Rancho, you were taken to Unit 10, am I correct?

A Yes.

Q And you saw some multiple dwelling lots?

A I did.

Q And you purchased two multiple dwelling lots?

A That's correct.

Q After you saw them?

A Pardon?

Q After you saw them?

A Yes, I did.

Q Am I correct that four months after you purchased the multiple dwelling lots, you asked Rio Rancho if it would be possible for them to resell the lots for you?

A I don't know how much months it was after that.

Q Shortly afterwards.

A I don't have the dates in my head. I don't know.

Q This is Exhibit 128-E in evidence. I am showing you that letter (handing).

Could that refresh your recollection as to when you asked them if it would be possible to resell your lots?

A Yes, I guess that's the correct date.

Q And that is roughly four months after you bought the lots?

A Yes.

Q And you were only talking about the multiple dwelling lots, am I correct?

A Yes, that's correct.

Q You did not ask anyone whether it would be possible to sell you residential lots?

A No, we did not.

Q And after you wrote the letter to Rio Rancho about the multiple dwelling lots, you received a reply from them?

A Yes, sir.

Q And they said that they are not in a position to sell the lots for you.

A That is correct.

Q Did you make any further effort after receiving that reply from Rio Rancho to sell the multiple dwelling lots?

A No. Not out there, not at the office, no.

Q And that was in 1972?

A Yes.

Q When you bought the residential property, you knew if you were ready to build at Rio Rancho your residential lot was not developed, the company would exchange a lot in the building area for your lot, did you not?

A Yes, I knew that. I knew that, yes.

Q You knew that?

A Yes.

Q You knew you were buying a lot, but you were also buying a right to exchange?

A Right.

Q A right to exchange your lot in Unit 25 into the building area when you were ready to build?

A That's right.

Q And you went out to Rio Rancho in April of 1972 and you saw the building area and you said you were satisfied with your lot?

A I don't think I said that.

Q You said that you were satisfied with your lot.

A I didn't -- I didn't say I was not satisfied with them, no.

Q Do you recall signing --

A Pardon?

Q Do you recall signing a form while you were out at Rio Rancho saying that you were satisfied with your lot?

A No, I don't. Maybe I did. I don't know. I don't recall it, anyway.

MR. LAUER: Could you mark this, please.

(Defendant ATC Realty Corporation Exhibit BU marked for identification)

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Q I show you BU for identification (Handing).

Davis - cross

Is that your signature?

A That it is.

MR. LAUER: I offer it.

MR. KAUFMAN: No objection.

(Defendant ATC Realty Corporation Exhibit BU was received in evidence)

Q Showing you BU which is now in evidence, directing your attention to that line, "I have inspected my property and I am satisfied with the homesite I have purchased," and that is your signature.

A Yes.

Q Does that refresh your recollection, sir?

A That's correct. My name is on there, there is no doubt about that.

Q You were satisfied with your homesite and you understood --

A At that time, at that time I was, yes.

Q And you understood at that time that you had a right to exchange that homesite if you were ready to build into the building area? You understood that?

A Yes.

Q Mr. Davis, this is the exhibit I showed you before, AN in evidence. I am reading from page 3.

"Lots may also be purchased for speculative purposes, but such purchases are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years, that a percentage of the purchase price paid us included therein for use in advertising and development and that in trying to make a resell the purchasers may be competing with the company which has thousands of lots to sell."

Does that refresh your recollection as to whether you understood that at or about the time you bought your lots?

A I don't really think I understood that paragraph there.

Q Do you recall hearing that paragraph or reading it?

A I don't ever recall reading it.

Q Do you recall being apprised that your efforts to sell the lots would be difficult at or about the time you bought the lots because you would be, in effect, competing with the company?

A Well, really, it was my understanding this was going to be developed immediately, these lots.

Q All the lots?

A Yes. That was the -- 25 was the next unit to be developed, and then the multiple dwelling was supposed to be right after that to be developed. That was my understanding, and my wife's.

Q Directing your attention to the resale nature of the purchase, does this refresh your recollection that in 1972, you were somehow told that it would be difficult for a homesite lot or multiple dwelling lot purchaser to sell those lots since they would be in competition with Rio Rancho and AMREP which had many thousands of lots still on the market?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

Do you understand the question?

THE WITNESS: No, I don't, your Honor.

THE COURT: Reframe the question.

Q Do you recall being told or reading that you would have difficulty selling the lots you bought because the company had many thousands of similar lots which they were trying to sell?

A No one ever told me that, no.

Q And you don't recall reading this in the property report?

A I don't recall reading that at all.

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Q In November of 1973 you were having some difficulties keeping up the payments on the property?

A Yes. It was one of the months, I don't know which one it was.

Q That was because you are retired and you are on a fixed income and you found that the purchasing power of your dollar was being decreased because of inflation?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall meeting with a Mr. Estrema from Roth Realty?

A On Hempstead Turnpike, yes.

Q Do you recall telling him that one of the reasons you required a reduction in your monthly payments was that you were on a fixed income and that the purchasing power of your dollar was being decreased because of inflation?

A That is possible, but I don't recall that conversation.

Q In any event, you met with Mr. Estrema?

A Pardon?

Q You met with Mr. Estrema?

A Yes, I had quite a bit of difficulty in getting in contact with him. I finally met with him.

Q You finally met with him in his office?

A Yes, that is correct.

Q At the time that you met with him you were paying $34 on the Unit 25 lot?

A That is correct.

Q And $72 --

A On the multiple dwellings.

Q $106?

A That is correct.

Q He agreed and the company agreed to reduce your payments to $78 a month?

A Yes, $58 and 20, yes.

Q $78?

A That is correct.

Q They reduced it by about 25 percent?

A Yes, that is correct.

MR. LAUER: Mark this.

(Defendant ATC Realty Corp. Exhibit BV marked for identification)

Q Showing you Defendant Exhibit BV for identification, do you recognize the handwriting?

A Yes, I do.

Q Is that yours or your wife's?

A That is my wife's. She is my secretary. All right, skip it.

Q Do you recall your wife's sending this letter?

A Yes, that is authentic. That is a letter my wife sent thanking Mr. Estrema for getting it reduced.

MR. LAUER: I offer BV.

MR. KAUFMAN: No objection.

(Defendant ATC Realty Corp. Exhibit BV received in evidence)

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MR. LAUER: May I read it to the jury, your Honor?

THE COURT: Yes.

(Mr. Lauer read Defendant ATC Realty Corp. Exhibit BV in evidence to the jury)

MR. LAUER: No further questions.

THE COURT: Redirect?

MR. ARKIN: I have a couple of questions.

THE COURT: Go ahead, Mr. Arkin.

CROSS EXAMINATION

XX

BY MR. ARKIN:

Q Mr. Davis, did you say that you owned 200 acres in Long Island?

A Did I what?

Q Did you say that you owned 200 acres in Long Island?

A No, sir.

Q Do you own any acreage in Long Island?

A Do I own any?

Q Yes, sir.

A Yes, I do.

Q How much do you own?

A Well, I am claiming to own ten acres of Cedar Beach, Mt. Sinai that came down to my family through the Setauket Indians. I have a lawsuit right now.

I have a lawsuit right now for your information against the Township of Brookhaven that has been trying to take this property away from me and my family for the last fifty years.

Q I am not looking for any business.

A Okay. I just don't want anything, only what belongs to me.

Q Excuse me.

A I don't want anything, just what belongs to me and I will fight for what belongs to me.

Q I understand that, sir.

A Thank you.

Q How much is that land that you now own worth?

A I wouldn't know.

Q Do you have any idea at all?

A I don't see how anyone could ever put a price tag on that area of property. It is right on Long Island Sound. It's a beautiful piece of shorefront, about 1200 feet, and there isn't any more of it. That is all there is and when God Almighty put the shorefront down, he only put so much down and that is gone.

Q It was the God Almighty who put all land and there is just so much of it, isn't that right?

A That's right.

MR. ARKIN: Mark this.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit BW marked for identification)

Q Mr. Davis, do you recognize this document, BW for identification?

A Yes.

Q Is that yes?

A Yes, that is right.

Q Would you please tell his Honor and the jury what this document is.

A Well, it's a map of Rio Rancho Estates.

Q Is this your map?

A It's a map that was given to me by Rio Rancho, one of your agents, yes.

Q Is the handwriting which appears on this particular map your handwriting?

A I believe it is, yes.

MR. ARKIN: We offer BW for identification.

MR. KAUFMAN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit BW received in evidence)

Q Mr. Davis, the first piece of property you bought from Rio Rancho was in Unit 25, am I right?

A That is correct.

Q Unit 25 appears in the upper right-hand corner of the Rio Rancho Estates development, am I correct in that?

A You are very correct, yes, sir.

Q And the developed area of Rio Rancho appears in the lower right-hand corner?

A That is correct.

Q And you said that it took you some 20 or 25 minutes to travel from the developed area to Unit 25, is that also right?

A I estimated that, yes. I don't know whether that would be correct or not, but I estimated it took about twenty minutes. Maybe he took me around by the way of it, you know, the Mill Pond or something out there, I don't know, or the river.

Q Like a taxidriver?

A Yes.

Q Mr. Davis, you were in construction during your working years, weren't you?

A I was what?

Q Construction?

A Yes, sir.

.PM

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Davis - cross

Q You were a heavy construction or heavy machine operator?

A That's correct.

Q What kind of a machine did you operate?

A Well, mainly steam whirly cranes, probably with a capacity of lifting 100 to 200 ton.

Q What kind of project did you work on?

A I worked on bridges, I worked on buildings. I helped to build all the bridges across from Atlantic Beach to Smiths Point on Long Island, the Great South Bay.

Q You have some idea, sir, of how long it takes to construct particular things?

A I do.

Q And how long it takes to make bridges and buildings and roads?

A That's right.

Q Now, you said on your direct testimony, didn't you, that you thought -- not that you thought, but that you were told that unit 25 would be developed immediately?

A That would be the next unit, when I bought that acre of property, which was to be developed. That was the salesman, that's the word he gave my wife and I.

Q Were you also told that the entire Rio Rancho development would be developed immediately?

A I don't know about that.

Q Just unit 25?

THE COURT: He said unit 25 would be the next unit to be developed.

MR. ARKIN: I understand that, your Honor.

A That's right, that's what I said.

Q When you drove out there from the developed area, it took 20 or 25 minutes through largely undeveloped land, didn't it?

A That's correct. That's my recollection. There was not many houses where we drove.

Q In fact, after a period of time there were no houses, isn't that right?

A After a period of time all there was was cattle. Cattle and cactus.

Q I guess we have to have cattle.

A All right.

Q Mr. Davis, you know as a construction man that you cannot build a whole community overnight, don't you?

A I certainly do. I am well aware of that fact.

Q You knew at the time that you had your lot in unit 25, which had no houses and no roads -- you said no roads?

A No roads. Well, there was a dirt road, that's all. I wouldn't say there was no road because we couldn't have driven there.

Q There was a dirt road?

A There wasn't any mountain or anything like that that we had to go over.

Q There were just cattle grazing?

A Yes, tumbleweeds.

Q And some sagebrush?

A Sagebrush.

Q You must have known, as a construction man, that you couldn't expect unit 25 to develop overnight, isn't that right?

A Well, that could be, but I was told it was going to be developed.

Q You in your own mind knew it couldn't be developed overnight as a construction man?

A That's possible.

Q You also knew that if you wanted to take you and your wife out to Rio Rancho because of your wife's arthritis to build a home, that you had a right to take that lot in unit 25 and exchange it into a developed area and build a home there, didn't you?

A Yes, but that was not our thinking. We wanted to build up in unit 25.

MR. ARKIN: I have no other questions.

THE WITNESS: Okay, thank you.

THE COURT: Any redirect?

MR. KAUFMAN: Yes.

XXX REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Davis, was there a similar exchange provision with respect to your multiple dwelling lots?

A Was there what?

Q A similar exchange provision with your multiple dwelling lots.

A I believe so, yes.

Q YRu think there was?

A I believe that was so.

Q In other words, you think that if development had not reached your multiple dwelling lots at the time you wanted to put up an apartment house, let's say, you could trade in that multiple dwelling lot for a lot in the building area?

A Well, I wouldn't be too sure of whether that was possible on the multiple dwellings or not. I really don't know.

MR. KAUFMAN: No further questions.

THE WITNESS: I am sorry.

THE COURT: You may step down.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Next witness.

THE WITNESS: Thank you, your Honor. Thank you all. Bye-bye.

MS. HYNES: Your Honor, can we distribute the report?

THE COURT: First see if your witness is here.

MS. HYNES: I am informed she is not here.

THE COURT: We will have a recess and the jury will take the reports in to look at them.

(Recess.)

(In open court in the presence of Mr. Kaufman and Mr. Lauer; jury not present.)

MR. KAUFMAN: On the evening of Monday, November 22nd, the following 3500 material was given to a representative of John Davis' firm for distribution:

3531-A, questionnaire of James Davis which included a letter, dated 7/31/72.

3531-B, a letter written by Mr. Davis, dated November 27, 1973.

3531-C, a second questionnaire from Mr. Davis eojb 6

which again included a copy of that same letter, dated 7/31/72.

Plus the company's responsive letter, dated August 10, 1972.

On November 23rd, the following 3500 material was distributed for the witness Leon Switt:

3553-A was the witness' questionnaire.

3553-B, a letter dated February 23, 1971.

3553-C, a letter dated October 29, 1973.

3553-D, a letter dated May 20, 1968.

3553-E, a letter dated June 18, 1969.

3553-F, a letter dated October 9, 1968.

3553-G, a letter dated May 26, 1969.

3553-H, a letter dated November 12, 1974.

3553-I, a letter dated March 12, 1973. That's a two-page letter.

That's it. Thank you.

(In the presence of Ms. Hynes and Mr. Lauer.)

MS. HYNES: Can therecord reflect that 3500 material for the witness William Brindle was turned over last evening.

No. 3589-A through O.

Let the record also reflect that 3500 material for Nicholas Masone was turned over to defense counsel the evening prior to his testimony. That 3500 material was marked 3517-A, B, C. 3517-C is a letter dated April 2, 1976 to John C. Schettino.

(Continued on next page.)

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(In open court - jury present)

THE COURT: Call your witness.

MR. DEVORKIN: The government calls Chadijah Mohammed.

KHADIJAH MOHAMMED, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Miss Mohammed, would you please keep your voice up as much as possible so we can all hear everything you have to say.

Where do you live?

A I live 40-13 Tenth Street, Long Island City.

Q If you don't mind me asking, how old are you?

A Forty-two.

Q Are you married?

A No; divorced.

Q Do you have any children?

A Nine.

Q What are their ages?

A Seven to twenty-five.

Q What do you do for a living?

A I'm a banker.

Q What kind of work do you do in the bank?

A I'm assistant manager.

Q Here in New York?

A Yes.

Q How long have you been with the bank?

THE COURT: What bank?

Q Which bank is it?

A The New York Bank for Savings.

Q How long have you been at the bank?

A Nine years.

Q How much do you make now?

A Approximately $12,000 a year.

Q What is your educational background?

A I have a degree in banking and financing.

Q From where?

A Manhattan College.

Q Keep your voice up so that everybody all the way back to me can hear what you are saying.

Do you own any lots or portions of lots at Rio Rancho Estates?

A Well, I'm paying on one lot, I haven't had completed, there is another seven months to go, and I'm a partial owner of another lot which involves three other people.

Q How much money have you personally paid so far on those lots?

A About $3,000.

Q When was your first contact with Rio Rancho Estates?

A In November of 1969, through a dinner with another couple.

Q Did you go to the dinner with the other couple?

A Yes. They invited me to come along with them.

Q They were property owners already?

A Yes. They had owned property -- they have invested, I should say, in property for a year.

Q Where was that dinner held?

A It was in a hotel in Manhattan. I don't recall the name of the hotel.

Q What occurred when you arrived at the hotel?

A We were seated at a table which held ten people, five couples, and there was a representative who sat at our table.

Q Do you recall the representative's name?

A Sylvia Barton.

Q What, if anything, did Miss Barton say to you initially when you were seated?

A Well, we just talked about investment in land and how land is a growing investment.

Q Did you see any films that evening?

A Yes, I did see a film, and there was a speaker at the front of the room and he spoke about inflation and how it eats up your dollar and that the growing investment in land because Albuquerque was expanding toward Rio Rancho.

Q Did he say anything about the physical location of Albuquerque, that is, what geographical features around Albuquerque were?

A Yes. It was surrounded by, I believe, government property on one side, a mountain on the other and it was expanding toward Rio Rancho, that was the only way for it to grown.

MR. DEVORKIN: May I have a moment, your Honor?

(Pause)

Q Do you recall any promotional material that evening?

A Nothing, really, other than the film I would say promotional material.

Q Did you see any literature of any kind?

A Nothing other than some pamphlets that were given to me.

Q What, if anything, do you recall about the pamphlets?

A It was on housing, ranch-style housing, what sort of housing you wanted built.

Q Do you recall a pamphlet called " This Is My Land"?

A That was just scenic, I think. I think it was most scenic in that.

Q Do you recall seeing any maps that evening?

A A map of how Albuquerque was expanding towards Rio Rancho.

Q What, if anything, was said to you that evening about reselling property at Rio Rancho Estates?

A Well, it was not actually told to me that it was not resellable, but then, they told me it was a growing investment and I was led to believe that it could be resellable because it was a growing investment.

Q Do you recall the speaker saying anything about other types of investments, such as money in the bank or anything like that?

A Yes. That investment in land was a wiser investment.

Q Did he explain why?

A Well, I guess more or less he did, but exactly, I don't remember the wording.

Q What happened when the speaker was finished with his presentation, if anything?

A Well, the representatives at the table would raise their hand and tell to hold a certain land for whoever was at their table.

Q What, if anything, did Miss Barton say to you about what was happening?

A Well, she told me that I should take the investment because it was a good investment and I should get it while -- in other words, while the getting was good, because someone else might claim it.

Q Did she tell you anything about the location of the particular property?

A Yes. She told me it was on the golf, it was facing a golf course, which, of course, in the picture showed very green and beautiful land.

Q Did you sign a contract after that?

A Yes, I did.

Q First let me show you Government Exhibit 388 in evidence (Handing).

Would you take a look at it, please.

Would you look at pages 8, 9 and 10, please?

Do you recall seeing that brochure at all that evening?

A Yes, I do.

Q What about the map on pages 8 and 9?

A Yes.

Q You saw that that evening?

A Yes, yes, definitely.

Q Showing you Government's Exhibit 135-A, would you examine it (handing).

Do you recognize it?

A Yes.

Q Keep your voice up.

A Yes.

Q What is it?

A It was the agreement which I signed.

Q That evening?

A The purchase agreement, yes.

Q This is your signature at the bottom?

A Yes, it is.

MR. DEVORKIN: I offer 135-A.

MR. ARKIN: No objection.

(Government Exhibit 135-A received in evidence)

MR. DEVORKIN: May I read from a portion of it, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 135-A in evidence to the jury)

Q When you signed this contract, what, if any, improvements did you expect on your property that you were buying?

A Well, I expected --

MR. FLEMING: I object to that.

MR. ARKIN: Hold it.

MR. FLEMING: I object.

THE COURT: Sustained.

A I --

THE COURT: Wait.

Q You can't answer the question.

A Sorry.

Q I take it -- that night, did you see pictures of Rio Rancho Estates?

A Yes, I did.

Q What do you remember about the pictures you saw or the films you saw of Rio Rancho EStates?

A Well, it was very --

MR. ARKIN: Objection, your Honor.

THE COURT: The pictures are in evidence. The jury has seen them. I gather that she saw the film the jury has seen.

They know what is in the film. What she remembers is immaterial.

MR. DEVORKIN: Fine.

Q Do you recall whether you got any insurance with the contract?

A No, I don't.

Q For what purpose did you buy this property?

A My first intentions were for investment.

Q Did you have any other intentions?

A Well, later after the second dinner I had decided to live there. I thought it would be very nice.

Q Do you recall getting any materials of any kind after you signed your contract?

A It was about four or five pamphlets.

Q Showing you Government's Exhibit 135-A in evidence, there is a place here where it appears that your initials appear, do you see that?

A Yes, I do.

Q When the contract was being filled out and you got to that portion of the contract, what, if anything, did Miss Barton say to you?

A Well, my understanding of initialling that was for the receipt of the four pamphlets or five pamphlets that I did receive. I didn't really read that when I initialed it.

Q Did Miss Barton say anything to you when you got to that point?

A It was for the receipt of the pamphlets that I was receiving.

Q Did Miss Barton go through the pamphlets with you?

A No, she did not.

Q Do you recall receiving any federal or state property reports?

A No.

Q At the time you made this investment did you have any other investments?

A Yes, some stocks.

Q How much money did you have in stocks?

A Somewhere between $500 or $800 in stock. I don't really remember.

Q Did you have any money in the bank?

A Yes, I did.

Q About how much?

A Maybe $1,000, $1,500.

Q How much money were you earning at the time you made this purchase?

A About $8,000 a year plus I had an income from my ex-husband.

Q That was for child support?

A Yes.

Q How much was that?

A $200 a month.

Q Did you say anything to your sales woman about your family and your obligations?

A Yes, I told her I had a large family.

Q What did she say, if anything?

A Well, it was a good investment for them, for their future.

Q Did you attend any dinners after this first dinner?

A Yes, about three others.

Q For what purpose?

A Because they called constantly asking you to invite other people to invest and I went to at least three other dinners, one which I purchased another -- a storefront.

Q How would you compare the presentations at the other dinners you went to with the presentation at the first dinner?

A It was all similar.

Q Were you told anything at the subsequent dinners about your first piece of property?

A Yes, we were -- I was offered to exchange it for another portion of property, for a larger property for an additional charge, which I refused.

Q Were you told anything about appreciation on your property?

A They told me it was increasing in value.

Q You said you bought another lot.

A I bought a storefront.

Q That was a commercial piece of property?

A Yes, commercial.

Q Did you buy that alone or with someone else?

A There was three other parties with my niece and another couple.

Q Do you recall when that was?

A That was April in 1970.

Q In which unit was this commercial lot?

A I really don't know the number.

MR. DEVORKIN: Mr. Clerk, can we mark this 135-D.

(Government hxhibit 1350D marked for identification)

Q Showing you 135-D for identification, does that refresh your recollection about what unit the commercial lot was in?

A Yes. It was Unit 1.

Q Do you recall when you bought that lot?

A That was April --

THE COURT: Do you have the contract in your hand?

MR. DEVORKIN: No, I don't, your Honor. I don't have the contract.

THE COURT: What was she refreshing her recollection in?

MR. DEVORKIN: Another document.

For the record, that document is 3522-C for identification.

THE COURT: Show it to counsel.

MR. DEVORKIN: They have a copy of it, your Honor.

THE COURT: You have it in your hand. Show it to them.

(Pause)

Q Do you recall when it was that you bought a part of this commercial lot?

A In April of 1970.

Q For what purpose did you buy it?

A Well, that was for an investment purpose. When I took residence in Rio Rancho, I would have something for a means of support until I found job placement.

Q Do you recall the purchase price of it?

A $1700.

Q You shared the payments on that with the other people?

A With three other people.

Q Do you know where the contract is today or who has the contract?

A I believe the other couple has the contract.

Q Have you asked them to try to find it?

A Yes, I have.

Q Were they able to?

A No, they weren't.

Q Did you ever visit your property?

A No, I did not.

Q Why was that?

A I could never afford to go out there for a visit.

Q Did you ever write anyone after you bought your property making inquiry about your property?

A Yes, I wrote the Commerce of Albuquerque, New Mexico, which I didn't receive an answer from.

Q Let me show you again 1350D for identification.

What is that?

A This is a letter to the Department of Commerce at Albuquerque, New Mexico, requesting --

Q Don't read from it.

Did you receive any response to that?

A No, I did not.

MR. DEVORKIN: I offer 135-D.

MR. ARKIN: I object, your Honor.

THE COURT: Let me see it.

MR. ARKIN: Yes.

(Pause)

THE COURT: Objection sustained.

Q Did you ever write AMREP or Rio Rancho about your property?

A I wrote Rio Rancho asking them if it was resellable to them.

Q Let me make sure I understand something.

It was after you bought the initial residential lot that you thought you might move out there?

A Yes, that's correct.

(Continued on next page)

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Q Showing you Government's Exhibit 135-B and C for identification, would you please look at them and tell us whether you recognize them?

A Yes, this is a letter I wrote to Rio Rancho.

Q That's 135-B?

A Right.

Q 135-C?

A 135-C is the answer they sent back to me.

MR. DEVORKIN: I offer 135-B and C.

MR. ARKIN: No objection.

XXX

(Government Exhibits 135-B and C received in evidence.)

Q Mrs. Mohammed, before you wrote 135-B, did you make any phone calls to Rio Rancho?

A That was concerning the resale?

Q Yes.

A I had called them and they had told me to rest assured there was no truth in the statement that the property was worthless.

MR. DEVORKIN: May I read 135-B and C, your Honor?

THE COURT: When was the telephone call made?

MR. DEVORKIN: The letter is December 29th of 1975.

Q Correct.

A Right, so it was approximately a couple of days before that.

MR. DEVORKIN: May I read them, your Honor?

(Mr. Devorkin read from Government Exhibits 135-B and C in evidence to the jury.)

MR. DEVORKIN: Mr. Clerk, can you mark this 135-E, please.

XX (Government Exhibit 135-E marked for identification.)

Q Mrs. Mohammed, would you examine 135-E for identification and tell us if you recognize it?

A Yes, this is my personal check for December.

Q Did you mail this check to anyone?

A The envelope that's provided for you to Chemical Bank.

Q Here in New York?

A Yes.

Q You got the envelope from Rio Rancho?

A Yes, I did.

Q This was your monthly payment?

A That's correct.

MR. DEVORKIN: I offer 135-E.

MR. ARKIN: No objection.

XX (Government Exhibit 135-E received in evidence.)

MR. DEVORKIN: May I just read this, your Honor, to the jury?

THE COURT: You may.

(Mr. Devorkin read from Government Exhibit 135-E in evidence to the jury.)

MR. DEVORKIN: No further questions.

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Mrs. Mohammed, my name is Peter Fleming and I represent some of the defendants.

When you purchased -- when you purchased your second purchase of land, you purchased that jointly with others, is that correct?

A That's correct.

Q While you don't have the contract, was it a contract --

A Similar to this?

Q Yes.

A Yes.

Q So I can put it on the record. This is 135-A in evidence and this is the contract you signed on November 16, 1969 for approximately one half of an acre of land, is that correct?

A That's correct.

Q When you made your second purchase, did you testify that was in April of 1970?

A Yes, approximately.

Q And the contract you signed -- withdrawn.

Did you sign it with others?

A Yes, I did.

Q Was it --

A Yes, it was similar.

Q On the second contract did you place your initials at the same spot as you placed your initials here to your best recollection?

A If it was required, I would have placed my signature there.

Q The paragraph that reads, "I/we acknowledge receipt of copies of restrictive covenants, property report filed with the office of Interstate Land Sales Registration and applicable public reports," et cetera.

A That's correct.

Q Who was your salesman at the second dinner?

A Miss Sylvia Barton again.

Q What did she tell you about placing your initials there with regard to the second contract?

A I don't really recall that.

Q Did you receive a property report when you purchased the second parcel of land jointly with your friends?

A They took most of the material that was collected.

Q My question is did you --

A Receive it? No.

Q You did not. Did you see a property report?

A No, I did not.

Q Did you see a federal office of Interstate Land Sales registration?

A No, I did not.

MR. FLEMING: Do you have the 1970 report, both New York and federal?

Q Now, let me show you Exhibit 146-T in evidence, Rio Rancho Estates property report, notice and disclaimer, and this is the federal report. Would you look at it.

A I don't recall seeing this.

Q You say that although you bought land on two occasions you have no recollection of ever seeing that report?

A No, I don't.

Q Let me show you what has been marked BL for identification.

MR. FLEMING: Is BL in evidence?

THE CLERK: I have to look through my records.

Q Let me show you what has been marked Defendant's BL for identification, which is a New York property report, dated April 17, 1970. Would you look through that.

A Was this in a book form or just like this?

Q Like that.

A No, I didn't see this.

Q You saw nothing like that?

A No.

Q Did you see something like that in book form?

A I remember books being given to us, but I don't remember something as large as that.

Q When you purchased your first half acre did you know -- were you told of your exchange privilege?

A No, I wasn't.

Q That rings no bell?

A No.

Q Directing your attention to the contract which you signed, the back of it, paragraph 3, this is Exhibit 135-A, paragraph 3, "If when buyer is ready to build a home utilities have not yet reached his site,seller will exchange a comparable building lot in an area already served by utilities for a single lot of buyer."

Did you read that when --

A When I signed it? No.

Q Did you read it at any time?

A After, yes.

Q How soon after you signed the contract --

A Well, actually I didn't read it right after. It wasn't until there was a controversy about it that I bothered to read it.

Q You had a controversy about it. With whom did you have the controversy?

A I didn't have any controversy. It was on television.

Q You read your contract after something was on television?

A Right.

Q That was about four or five years after --

A That's correct.

Q That was the first time you read your contract?

A Yes.

(Continued on next page.)

Q Did you read the literature that you did receive?

A It was on housing.

Q Did you read that?

A Yes, I looked through that.

Q Did you read that within a month or so after -- at least within a month or so after you purchased the land?

A Yes, I did.

Q But you did not read your contract until four or five years?

A No, I did not.

Q Your letter of December 29, 1975, written to Rio Rancho, you say, "I realize my concern is unwarranted, however, is it possible to sell this investment back to you?"

Was that letter written after you had read about the indictment in this case?

A Yes.

Q You went to a dinner in November of 1969, and that was the dinner at which -- that was the dinner you went to, is that right?

A Yes, that's correct.

Q You were taken there by someone you knew, I take it?

A A couple, yes.

Q Were they a couple you knew?

A Yes.

Q Were they friends of yours?

A Yes, they were.

Q How long had you known them?

A For about four or five years.

Q Four or five years.

They had purchased land at Rio Rancho?

A A year before, earlier.

Q How much had they purchased?

A I really don't know.

Q Did they tell you how much they purchased?

A No.

Q Had they gone to Rio Rancho themselves?

A No, they had not.

Q Now, did they ask you to the dinner?

A Yes, they did.

Q And what did they say to you when they asked you to dinner?

A They told me to come to the dinner because they were asked to bring guests along to invest in property.

Q Did they tell you they had invested in property?

A Yes, they did.

Q Did they tell you that they were unhappy with their investment?

A No. They told me they were quite happy.

Q Did they tell you why they were happy?

A Well, because they said that was the future for investment and they could live there with their family.

Q Did they tell you what the property was like?

A Well, no, they didn't really know. They had never been there.

Q Did you ask them whether they had ever been there?

A Yes, I did.

Q Were you interested when they explained that the dinner had to do with the sale of land?

A Yes, I was interested.

Q And you went and you purchased one half an acre, is that right?

A That's correct.

Q And am I correct that you still feel that real estate has permanent value?

A Yes, real estate does have permanent value.

Q And am I correct that you feel that you or your children may well profit from your investment at Rio

Rancho?

A If it's other than desert or marsh land.

Q Exactly.

Am I correct, Mrs. Mohammed, that if the land that you purchased, that is, the residential land that you purchased, is ready for family building, phone service, electricity and access to roads, that you believe it has value and you have no complaint?

A Is it on a golf course?

THE COURT: That's isn't the question.

A If the land that I purchased is ready for this, is that the question?

Q Family building, phone service, electricity and access to roads and is not dry desert land or marsh in the middle of no where.

A Then I don't have any complaint.

Q You have never seen Rio Rancho, is that right?

A That's right.

Q You now know that the one half acre which you purchased in 1969 may be exchanged when you are ready to build to an area served by utilities?

A Yes.

Q Is that right?

A Yes.

Q And you understand that would also be served by water? You would have water?

A Yes.

Q And you could build your house?

A That's correct.

Q You understand that all now?

A Yes, I do.

Q And if that is true, so far as you are concerned, you are happy with your investment, if that's true?

A If that's true, yes.

Q Thank you.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Mohammed, I am Stanley Arkin and I am one of the attorneys for the defense.

You are an assistant manager of a savings bank?

A That's correct.

Q Which savings bank is that?

A The New York Bank for Savings.

Q Is it part of your responsibility as an assistant manager of a bank to attract new savings accounts to your particular branch?

A That's -- yes, it is.

Q And you are familiar, I take it, with the advertising your savings bank has publicly, isn't that so?

A That's correct.

Q Is that something like -- correct me if I am wrong -- put your money in a savings account and watch it grow?

A Yes.

Q Is that the New York Bank for Savings' slogan?

A Yes, it is.

Q Watch it grow?

A Yes.

Q If you put money in the savings bank, it grows at what, 5 per cent per year?

A 5.25 per cent per year.

Q That is regulated by law?

A That's correct.

Q Do you have any idea -- excuse me. Strike that.

When you were at your first dinner party with Miss Barton, she was talking to you about inflation eating at the dollar, isn't that so?

A That's correct.

Q Do you have any idea what the rate of inflation is in this country?

A No, I don't, really.

Q Do you know whether it exceeds 5.25 per cent per year?

A Inflation?

Q Yes.

A I would say it does.

Q So that if you put your money in a savings account at 5.25 per cent per year, and inflation is greater than 5.25 per cent per year, your money is not growing, is it?

A No, it's not.

Q And your bank, the New York Bank for Savings, advertises put your money in the bank and watch it grow, am I correct?

A That's correct.

MR. ARKIN: I have no further questions.

THE COURT: Any redirect?

X REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. Mohammed, when you wrote in the letter dated December 29, 1975 that, "I realize that my concern is unwarranted," had you been told in the phone call to Rio Rancho that your concern was unwarranted?

MR. FLEMING: Objection.

A Yes, it was.

THE COURT: Sustained.

Strike the answer.

Q Why did you write, "I realize my concern is unwarranted."?

A Because I was told there was no warrant for believing the land was not liveable.

Q And you were told by Rio Rancho?

A A representative of Rio Rancho.

Q Do you recall Mr. Fleming asking you about under what conditions you would have no complaints about your residential property?

A Yes.

Q When you bought your residential property for investment, did you believe you would be able to resell it at a profit?

A Yes, I did.

Q And if you weren't able to resell it at a profit, would that have a bearing upon whether you were satisfied?

A Absolutely.

Q Your commercial property is in unit 1?

A Yes.

Q Do you know where unit 1 is in relation to the developed area of Rio Rancho?

MR. FLEMING: Objection. I did not examine on this.

THE COURT: She says she has never been there.

MR. DEVORKIN: I know that.

Q Do you know where it is in relation to the developed area?

MR. FLEMING: Objection.

A No, I don't.

Q You bought your commercial property for investment, too, didn't you?

A That's correct.

Q You expected to be able to get an income from your commercial property?

A Yes.

MR. FLEMING: Income?

May I have that question and answer again, please?

THE COURT: Do you mean just by lying there she would get an income? Obviously not.

MR. DEVORKIN: I agree, your Honor.

THE COURT: Then the question is misleading.

Q Why did you purchase your commercial lot?

A Okay. A commercial lot, you would have a business on it and, of course, that would bring in a profit.

Q And to have a business on it you would need utilities and so forth?

A That's correct, yes.

Q Are you aware that there is no exchange privilege for your commercial lot?

MR. FLEMING: Your Honor, this is well outside the scope of cross examination.

THE COURT: Sustained.

MR. DEVORKIN: Your Honor, Mr. Fleming --

THE COURT: He went into the exchange privilege regarding the home site.

MR. DEVORKIN: But he did go into the contracts being similar, your Honor.

THE COURT: Nothing was brought out on the cross examination regarding exchange privilege on the commercial lot.

MR. DEVORKIN: I agree, your Honor. But he did go into the contracts being similar.

THE COURT: Since you agree, abide by my ruling for a change instead of arguing all the time.

Q When did you think you would be able to use your commercial lot?

MR. ARKIN: Objection. It is improper redirect.

THE COURT: Sustained.

Q Well, would the absence of utilities on your commercial lot today have a bearing on whether you were satisfied with it as an investment?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Mr. Arkin asked you about money in a savings bank. Do you recall that?

A Yes, I do.

Q Do you recall him asking you about it growing at approximately 5 per cent per year?

A Right. But when I purchased --

THE COURT: Wait, wait.

Q You remember that, right?

A I remember it.

Q In a savings bank, you can go in and get your money out at any time, right?

A Yes.

Q You don't have to wait for it or sell your account, right? Is that correct?

A That's correct.

Q And you are always getting the 5 per cent every year, right?

A Correct.

Q Every quarter of the year, correct?

A That's correct.

Q And you are aware that in a savings bank that after about 13 years if you leave your money in there the whole time it doubles in value?

A It doubles in value, correct.

Q So you have twice as much money in there as you had in the beginning?

A That's correct.

Q And you can take it out at any time?

A Yes.

MR. DEVORKIN: No further questions.

THE COURT: What do you want to question about?

MR. FLEMING: One question that Mr. Devorkin asked, if I might.

THE COURT: Go ahead.

XXX RECROSS EXAMINATION

BY MR. FLEMING:

Q Did you just testify you bought your residential property for investment?

A Now, which is my residential?

Q The first property, the half acre. Did you just testify --

A When I first purchased it it was for investment. I later decided that it would be liveable, it would be nice to live there.

Q In fact, when you filled out a questionnaire --

MR. DEVORKIN: I object to this, your Honor. This is outside the scope of redirect.

THE COURT: Overruled.

Q Did you talk to Mr. Devorkin?

A Yes, I have.

Q And when you filled out the questionnaire supplied by the U.S. Attorney's office, you stated, did you not, the first purchase, the one half acre about which I questioned you about before, was purchased for a possible home site?

MR. DEVORKIN: Your Honor. that is a mischaracterization.

THE COURT: Show her the document.

MR. DEVORKIN: I object to it --

THE COURT: He is showing her a document that she filled out for you.

Q It is already marked as 3522-A, and I direct your attention to this portion, if I might (indicating).

A Yes, I did fill this out.

Could I give an explanation?

Okay.

It says, "Investment, current home site or retirement."

It doesn't say did I decide for investment first and then a current home site, it just says one of the three, so, of course, at the time it was a current home site. But my first --

Q I understand. As you testified originally, when you first bought it, you thought investment and then a little later you changed and decided you might want to live there?

A Correct.

Q And my questions were that if what you had down there was something which had utilities and water, would be satisfied if, in fact, it had those things?

A Yes, and it was of value and I culd resell it and I would get a value, yes.

Q I am talking about the residential property, living there.

You don't want to live there any more?

A No.

Q Oh, you don't. All right.

THE COURT: You may step down.

(Witness excused.)

THE COURT: I gather the government has no further witnesses.

We will adjourn until tomorrow morning at 10:00.

(The jury left the courtroom.)

(Whereupon, an adjournment was taken to Wednesday, November 24, 1976, at 10:00 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Donovan Potter (Resumed)	2314	2344	2362 2366	2366
William Evans Brindle	2369	2378	2390	
James Davis (Resumed)	2391 2413	2414	2437	
Khadijah Mohammed	2441	2459	2490	2475

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891-A,891-B	2329	2335
893-A	2337	2340
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BU	2423	2424
BV	2428	2429

Defendant Howard Friedman and Henry Hoffman	Identification	Evidence
BW	2431	2432

Defendant Chester Carity and Daniel Friedman	Identification	Evidence
BX	2390	

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UNITED STATES OF AMERICA

v.   76 Cr. 644

AMREP CORPORATION, et al.

November 24, 1976
10:25 a.m.

oOo

(Trial resumes.)

(In open court without the presence of the jury.)

THE CLERK: Last night Mr. Lavinsky said that Mr. Arkin would sit in for him.

MR. ARKIN: Yes, your Honor.

MR. DEVORKIN: Your Honor, just before the jury comes in, Mr. Fleming on recross last night was using some 3500 material and I would renew the government's application under the Gardin case, which we submitted --

THE COURT: Yes, hereafter, if you are going to use 3500 material, you will have to indicate it comes from the government. I read the case and there is no doubt that is what it holds.

MR. FLEMING: What should I say?

THE COURT: "I have some information given to me by the government" when you put your question.

MR. FLEMING: Fine.

THE COURT: They had set forth the procedure and it is perfectly clear.

MR. SPRIZZO: There is another problem on that one. They have had a very broad classification of 3500 material and it includes a lot of stuff we have given them. I think it should only be statements made to a government agent.

MR. DEVORKIN: If it is something they had in their original file, we have been very careful to give it back to them, but if it is another kind of a document, they should follow that.

THE COURT: Bring them in.

(Jury present.)

THE COURT: You may proceed.

MR. DEVORKIN: The government calls Dennis Finnerty.

XXX DENNIS FINNERTY, called as a witness by the government, having been first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. DEVORKIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Finnerty, where do you live?

A 1456 Ohm Avenue, Bronx, New York.

Q How old are you?

A 33.

Q Are you married?

A Yes, I am.

Q Have you got any children?

A Yes, I do, two children.

Q What are their ages?

A One is going to be 4 this month and one was just 2 in July.

Q What do you do for a living?

A I am a police officer in the city.

Q New York?

A Yes.

Q Keep your voice up so we can all hear. How long have you been a police officer in New York?

A Ten years August 1st of this year.

Q Does your wife work?

A No, she doesn't.

Q What is your educational background?

A Four years of high school and two years of college.

Q What is your wife's educational background?

A My wife is a licensed practical nurse.

Q Do you own any lots at Rio Rancho Estates?

A Yes, I do.

Q How many?

A One.

Q How much have you paid so far on that lot?

A Approximately $1600.

Q When was your first contact with Rio Rancho?

A In March of 1974.

Q What was the nature of the contact?

A I saw an advertisement on television.

Q What did you do after you saw the advertisement?

A I phoned the number that was advertised and I was contacted by a representative, a Mr. Ike Taffel.

(Continued on next page.)

Q Did he call you on the phone or what happened?

A I called -- I called there and he paid a visit.

Q He came out to your home?

A That's correct.

Q What, if anything --

THE COURT: Wait a minute.

How do you spell the name of Ike?

THE WITNESS: T-a-f-f-e-l.

THE COURT: Thank you.

Q What, if anything, did Mr. Taffel say when he came to your home on that occasion?

A He explained the property, told me what it would cost, showed me various lots on paper, a map, and I purchased the property.

Q What reasons, if any, did he give for purchasing the property?

A Well, there were several reasons.

One, that it was a good investment, another reason, it would be a good place to retire to when I retire from this job.

Q Did he explain why it was a good investment?

A Yes, he did. He stated that the property was constantly increasing in value and that the growth of Albuquerque was to the northwest and that there would be plenty of opportunities for jobs.

Q Did he explain why the growth of Albuquerque was to the northwest?

A Yes, he did. He stated that the Rio Rancho property was surrounded by federal land and Spanish land grants and that the only possible way that it could grow would be to the northwest.

Q That is Albuquerque could grow?

A That's correct.

Q Did he mention at all the past prices of Rio Rancho?

A Well, originally when the property was selling a number of years ago, it was a lot cheaper then at that time, and that the property was constantly increasing in value.

Q You said you bought a lot that night or that day?

A That's correct.

Q For what purpose did you buy the lot?

A Well, I had two purposes:

One, for retirement, and the other purpose was for an investment.

Q Would you explain what you mean by those two?

A Well, when I retired from this job I had plans of having a home built on the property down there and retiring to that location, and also for the fact that it was a good investment because the property was constantly increasing in value and that any time I wished to cash it in I could and make myself some money.

Q That would be if you didn't retire there?

A That's correct.

Q At the time you bought the lot, did you have any unusual financial obligations?

A Yes, I did.

Q What were those?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q I am showing you what has been marked as Government's Exhibit 164-C for identification (handing).

Do you recognize it?

A Yes, I do.

Q What is it?

A It's a purchase agreement, the original purchase agreement that I had made out when Mr. Taffel had visited.

Q On that occasion that you just described?

A That's correct.

Q Is that your signature at the bottom?

A Yes, it is.

MR. DEVORKIN: I offer 164-C.

MR. ARISOHN: We have no objection.

XXX (Government's Exhibit No. 164-C marked for identification received in evidence.)

MR. DEVORKIN: May I read from a portion of it, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 164-C in evidence to the jury.)

Q Mr. Finnerty, do you recall whether or not you received a federal or state property report on that occasion?

A Yes, I did.

Q Did you sign for it?

A Yes, I did.

Q Did you get it before or after you signed your contract?

A I believe it was after I signed my contract.

Q Did you read through it?

A Very briefly.

Q Did you read it thoroughly?

A No, I didn't.

MR. ARKIN: Objection, your Honor.

THE COURT: You are going to ask him the same question, I assume.

Objection overruled.

Q Why didn't you read it thoroughly?

A I thought it was just another piece of advertisement that was included in the portfolio that was given to me and I had no reason to disbelieve any of the things that Mr. Taffel had informed me regarding the property.

Q Did you ever go to a dinner for Rio Rancho property owners after you bought your lot?

A Yes, I did.

Q Do you recall where the dinner was?

A I remember it being at the St. Regis Hotel in Manhattan.

Q Who invited you to the dinner?

A Mr. Taffel.

Q What did he say to you, if anything, when he invited you?

A Well, that the dinner was made up of people who had purchased property and it would also be attended by people who had been down to Rio Rancho who had seen their property and that there would also be a film shown regarding the property at Rio Rancho.

Q When you got to the dinner, was anything said to you about your property or buying more property?

A Yes. There was a listing of property for sale down at Rio Rancho and that it was an opportune time if I wanted to increase the size of the property because the property was expected to go up in value very shortly.

Q Did they explain to you why you should increase the size of your lot?

A Well, because it was a good investment and because the more you owned the more I would be making if I were to cash it in.

Q Did anybody say anything to you about buying an additional lot?

A Not at that time.

Q Mr. Finnerty, did there come a time when you actually went out to Rio Rancho Estates?

A Yes, in April of 1974.

Q Was that with your wife?

A Yes, it was.

Q Did you go by yourselves or did you go with any group?

A We went with a group.

Q Was it a Rio Rancho group?

A Yes, it was.

Q Before you went out with that group, did you have any meetings with the group?

A Yes. We had a pre-flight meeting at a location in the building on Broadway.

Q Would you just briefly describe what that was like?

A Well, there was a meeting which was attended by people who had purchased property who were going down there for the same reason we were, to see our property, and there was food served and we were introduced to one another and there was talk about the property.

Q At this time, were you thinking about moving to Rio Rancho or to Albuquerque?

A Not until I went down to Rio Rancho was I thinking of moving down there. It was mainly for retirement and for the investment purposes.

Q What happened when you got to Albuquerque on the tour?

A Well, we visited some of the locations on Rio Rancho, and I applied with the Police Department down there for the testing for a job with the Albuquerque Police Department.

Q What did you do when you did that?

A I went to the town of Albuquerque, to police headquarters there, and I was given a written examination, an audio-visual test, fingerprinted, I was interviewed by a lieutenant of the Albuquerque Police Department.

Q Did you tell anybody at Rio Rancho that you were going down there?

A Yes.

Q What was their response, if any?

A It was a fine idea because there were plenty of job opportunities and if I intended on living down there I would need a job.

Q How did you get from Rio Rancho to the Albuquerque Police Department?

A A worker for Rio Rancho down there drove me to the police headquarters in Albuquerque.

Q Did he pick you up, too?

A Yes.

Q Whatever happened to your plans to transfer to the Albuquerque Police Department?

A Well, when I came home, I realized that I wouldn't be able to afford to build a home down there at the time and also the fact that I would be giving up too many years with this police department here because there was no lateral entry into the police department in Albuquerque, so I abandoned the idea.

Q Did there come a time -- by the way, basically, what were the kinds of activities that you engaged in on the tour beside visiting the Albuquerque Police Department?

A Well, we visited parts of the property, the outskirts of Albuquerque, the mountains around Albuquerque, some of the night clubs in the town. That's about it.

Q Did you get a chance to see your property at some point?

A Yes, I did.

Q Before you saw your property, was there any meeting of the group of people at all?

A Yes. We were taken to a location just prior to visiting our property and we were assigned individuals who would take us to see our property.

Q Do you recall anything being said by Rio Rancho personnel to the group as a group before the individual purchasers went out to see their property?

A The fact that the property was a good investment and that we did the right thing in buying such property down in Albuquerque -- in Rio Rancho.

Q I take it then you went out and saw your own property?

A That's correct.

Q Was it you and your wife and the sales person?

A That's correct.

Q Do you recall how long it took you to reach your property?

A Approximately 15 or 20 minutes.

Q What, if anything, happened when you arrived at your property?

A I saw the property. I was a bit discouraged in what I had seen. I took several pictures of the property and I went back to the office with the person that drove us to see the property.

Q Did you say anything to that person?

A I let him know that I was a little bit discouraged in what I had seen and the type of property with all the advertisement material which I had read and seen on TV, that I was disappointed in what was there.

(Continued on next page.)

Q What was his response, if anything?

A Well, the fact if I ever decided to build down there, that I would have the opportunity to trade in the piece of property that I had for a piece of property of equal value in the developed area with utilities and roads at no extra cost to me.

In view of that fact --

Q Did he say anything about the growth of Albuquerque?

A Well, this was the constant thing. I remember practically everybody -- there was a sales representatives always told us or me, my wife, that Albuquerque was constantly growing and that the value of the property at Rio Rancho would be going up in value.

Q Showing you Government Exhibit 123-O, P, Q and R in evidence, would you examine them and tell us if you recognize them.

(Handing)

A Yes. These are pictures of the property and the surrounding area.

Q That you took?

A That's correct.

Q 123-R is a picture of a road, is that correct?

A That's correct.

Q Do you recall where that road --

A That road was the piece of -- that was the road that was next to my property.

Q How does this compare to the roads that you drove out on to get to your property?

A It's a similar type of road. It was a dirt road.

Q You say you were taken back to the sales office at that point, after you expressed your displeasure.

A That's correct

Q What happened, if anything, at the sales office?

A I signed a statement stating that I was -- that I was satisfied with the property.

Q Why did you sign that statement?

A Because of what was told to me. I felt if I ever wanted to cash this property in that there would be a market for it, that I would get money as a profit and that if I did want to retire down there that I would be able to trade that piece of property in for equal value in a developed area with utilities and roads.

Q What was your understanding about whether you would have to pay any more money when you exchanged in?

A It would be an equal exchange for a piece of property in the developed area with no additional cost to me.

Q I take it you came back to New York after the tour.

A That's correct.

Q Did you ever buy any more property?

A Yes, I did.

Q Approximately when was that?

A When was that?

Q Yes.

A The following month.

Q Was that at a dinner or somewhere else?

A It was previous to a dinner. I purchased an additional piece of property strictly with the thought of an investment in mind.

Q That was at your home?

A That's correct.

Q Who was the sales person?

A Mr. Taffel.

Q When you say strictly as an investment, what do you mean?

A Well, the initial piece of property that I had purchased I had two purposes in mind, one is a place to retire and the other one as an investment in case I decided at the time I won't retire to that location I would be able to cash my property in at a profit.

Q And the second piece was strictly for the latter purpose?

A Strictly as an investment purpose.

Q Showing you Government Exhibit 164-B for identification, do you recognize it (handing)?

A Yes.

Q What is it?

A It's the second purchase agreement for the second piece of property that I purchased at Rio Rancho.

Q Is that your signature?

A Yes, it is.

MR. DEVORKIN: Was Mr. Taffel the salesman again?

THE WITNESS: Yes, he was, your Honor.

THE COURT: All right.

MR. DEVORKIN: I offer 164-B.

MR. ARISOHN: No objection.

(Government Exhibit 164-B received in evidence)

xx

MR. DEVORKIN: May I read a portion, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 164-B in evidence to the jury)

Q Did you receive a property report and offering statement when you signed this second contract?

A Yes, I did.

Q Did you read those?

A No, I didn't.

Q Why not?

A Because I had briefly scanned through the original and it was the same type of booklet that I had received previously for the first piece of property and I didn't think there was any need to read it.

Q Did you go to any dinners after that?

A Yes, I did.

Q For what purpose?

A Well, first of all, to meet with people who had purchased property down there; also to meet with people who had been down there on the trip with me and also I was asked to be able -- if I were willing to speak to the people that were at the dinner regarding my opinions of Rio Rancho and Albuquerque and what I thought of the area.

Q Did you speak?

A No, I didn't.

Q Was anything said to you about your property or the value of your property at those subsequent dinners?

A Well, the fact that the property was increasing in value -- that was conveyed to me by Mr. Taffel -- and that he was glad that I had purchased an additional piece of property because of investment purposes.

Q Did you ever try to sell your property at Rio Rancho Estates?

A Yes, I did.

Q Please describe what you did to try to sell it and when this was, if you can recall.

A Well, before I even attempted to sell any of the property at Rio Rancho, I had notified --

MR. FLEMING: Your Honor, can we have a responsive answer?

THE COURT: Yes.

Q Did you contact anybody for Rio Rancho in connection with trying to sell your property?

A Yes. I called a Mr. Taffel.

Q Explain what you said to Mr. Taffel, what his response was and what happened and when this was, as best you recall.

A As best as I can remember, it was towards the end of the year. I was having difficulty --

MR. FLEMING: No.

Q 1974.

A Yes, 1974.

I was having difficulty in making payments.

I notified Mr. Taffel that I would be interested in selling a piece of property.

He stated that he would call me back.

He returned the phone call and he advised me to get in touch with a phone number out in Long Island.

I had called up a Mr. Bushansky out in Long Island --

Q Did Mr. Taffel say anything else in the phone call about giving you a phone number to call?

A Other than the fact that it was something that he was not supposed to do and that --

Q Did you call this Mr. Bushansky?

A Yes, I did.

Q Who was he?

A He was a representative for the Helping Hand Realty Company in Long Island.

Q What happened then? What happened in that phone call?

A He said that he would be in touch with me, and at a later date I received a postcard to fill out information and return to him regarding the amount of property that I was willing to sell, the purchase price of the property and that he would see if he could sell it for me.

Q What happened after that?

A I didn't hear from him again.

Q Did you do anything else to try to sell the property?

A I went to several real estators in the Bronx and in Yonkers and I was informed that there was no market for the property.

Q Did they take a listing from you for the property?

A No, they did not.

Q Were there any other efforts to sell the property? Did you hear from anybody else in connection with selling your property?

A Yes.

Another company, I don't recall the name, from Florida was in touch with me stating if I paid them $350, they would try to sell the property in a foreign country.

Q What did you do?

A Well, when I heard that I had to pay another $350 for someone to sell my property, I didn't think it was very worthwhile.

Q I take it you didn't pay the money?

A No, I didn't.

Q Did there come a time when you made any changes in your contracts on Unit 24 and Unit 8?

A Yes.

When I had the difficulty in making payments, I was in touch with a Mr. Levine in the Broadway office, and they had made an appointment to see him, at which time I had gone down there.

I was relieved of the second piece of property and the monies that were invested in that were transferred to the first piece of property.

Q Showing you Government Exhibit 164-A for identification, do you recognize it (handing)?

A Yes, I do.

Q What is it?

A It's a letter stating that the property that was -- the second piece of property which was purchased--

Q Did you receive that letter?

A Yes, I did.

MR. DEVORKIN: I offer 164-A.

MR. ARISOHN: No objection.

xxx (Government Exhibit 164-A received

in evidence)

MR. DEVORKIN: May I read it, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 164-A in evidence to the jury)

Q Had you stopped payments at sometime before this arrangement was reached?

A I stopped payment after -- at the end of the year, in October of 1975.

THE COURT: Wait, wait.

He didn't stop any payment -- your question is, did you stop any payment when he wrote that letter?

MR. DEVORKIN: That's right.

Q And the answer is no, is that correct?

A That's correct.

Q Besidethe principal you had paid on Unit 8, had you also made interest payments or had your payments included interest payments?

A The payments that I was making included principal and interest.

Q After this letter was sent, did the contract get cancelled for Unit 8?

A Yes, it did.

Q Showing you Government Exhibit 164-D, do you recognize it (handing)?

A Yes.

Q Did you receive that letter?

A Yes, I did.

MR. DEVORKIN: I offer 164-D.

MR. ARISOHN: We have no objection.

(Government Exhibit 164-D received in evidence)

xxx

MR. DEVORKIN: May I read it, yor Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 164-D in evidence to the jury)

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MR. DEVORKIN: Mr. Clerk, can you mark this Government's Exhibit 164-E.

(Government Exhibit 164-E marked for identification)

Q Mr. Finnerty, showing you Government Exhibit 164-E, do you recognize it?

A Yes.

Q What is it?

A It is a check payable to Rio Rancho in the amount of $43.38.

Q Did you send that check to Rio Rancho?

A Yes, I did.

Q Do you recall the address to which you sent it?

A The address on the envelope. Rio Rancho Estates, Church Street Station, here in New York. Standard envelope that I have been sending all my other payments in on.

MR. DEVORKIN: May we mark this --

THE COURT: Is this check in payment of your monthly payment?

THE WITNESS: It is one of the monthly payments, yes, your Honor.

MR. DEVORKIN: 164-F.

(Government Exhibit 164-F marked for identification)

xxx

Q Mr. Finnerty, showing you Government Exhibit 164-F for identification, do you recognize it?

A Yes, it's the regular monthly bill that I received from Rio Rancho.

Q Included in there is there an envelope, a return envelope to use?

A Yes, there is.

Q What is the address on it, the return address?

A Rio Rancho, Post Office Box 5257, Church Street Station, New York, New York, 10429.

Q Are those the envelopes that you used to return your monthly payments?

A Yes.

Q Including Government's Exhibit 164-E for identification?

A The last exhibit, yes.

MR. DEVORKIN: I offer 164-E and F.

MR. ARKIN: No objection.

(Government Exhibit 164-E and F received in evidence)

xxx

Q Mr. Finnerty, did there come a time when you stopped payments on your remaining contract?

A Yes.

THE COURT: You mean discontinued payments?

MR. DEVORKIN: Yes.

Q When was that?

A That was the last check that I had sent them.

Q 164-E?

A Yes.

Q After you stopped -- that was October of '75.

A That is correct.

Q After you stopped payments, did you receive any letters from Rio Rancho Estates?

A Yes, I did.

Q Do you recall what the letter said?

A In essence it stated that if I didn't continue making the payments that I would lose the property and the money that I had invested in the property.

Q You haven't made any payments since that check, I take it?

A No, I have not

Q Has your contract been cancelled yet?

A Not to my knowledge. I haven't received any information.

Q Why did you stop making your payments at that time?

A Well, I saw that I couldn't sell the property to anyone. Rio Rancho wasn't going to buy it back from me. I saw that I had lost already to my estimation approximately $1600 which I had invested. I didn't intend to lose any more so I figured it was better to lose $1600 than to continue paying and lose a lot more. I stopped paying.

MR. DEVORKIN: No further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

XXX BY MR. ARISOHN:

Q Mr. Finnerty, my name is Mark Arisohn. I represent Rio Rancho Estates. This is the contract, Government's Exhibit 164-C, which you signed on March 4, 1974 and which you purchased for $3350 plus a finance charge a lot in Unit 24, is that correct?

A Correct.

Q On that night or that day when you purchased and signed this contract you initialed a portion of this contract which reads:

"I/we acknowledge receipt of copies of the protective covenants, property report No. R350982, filed with the Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development and offering statement No. R542580 required by the state authorities."

You initialed that, didn't you?

A Those are my initials.

Q Your wife initialed that, too, and you stated that you received those reports?

A Did my wife initial them? Let me see.

Yes.

Q I show you Prosecution's Exhibit 798 which is in evidence and ask you if this is a copy of the federal property report which you received?

MR. DEVORKIN: May we have the date on that report, Mr. Arisohn?

MR. ARISOHN: The date, Mr. Devorkin -- is -- well, it is your exhibit. Effective date October 16, '72.

MR. DEVORKIN: Okay.

A This doesn't look familiar to me.

Q You received a printed report that night, you received two printed reports March 4, 1974, isn't that correct?

A I received an offering statement.

Q You received an offering statement?

A Yes.

THE COURT: I gather these are offered on behalf of all your clients, aren't they?

MR. ARISOHN: Yes, your Honor, on behalf of all defendants.

(Defendant Howard Friedman and Henry Hoffman Exhibits BX and BY marked for identification) xxx

Q Showing you Exhibit BY for identification, is this the offering statement which you received on March 4, 1974?

A It looks like the type I received, yes.

MR. ARISOHN: I offer it.

VOIR DIRE EXAMINATION

xxx BY MR. DEVORKIN:

Q Mr. Finnerty, the one you received was in this form or was it bound on one side?

A I believe it was bound on one side.

MR. DEVORKIN: Do you have a bound copy, Mr.Arisohn?

THE COURT: Is there any doubt --

MR. DEVORKIN: I have no objection subject to checking it. I cannot look through each page, your Honor, and say that page was there, but I will check it later on. I have no objection at this time subject to that.

THE COURT: All right.

(Defendant Howard Friedman and Henry Hoffman Exhibit BY received in evidence)

THE COURT: Go ahead.

BY MR. ARISOHN:

Q This is the report, Mr. Finnerty, that you got that night you testified or a report that looked like this one, right?

A Yes, sir.

Q Calling your attention to page 3, paragraph 5, which says in dark black lettering "Offering". Do you recall reading that paragraph?

A No, I don't recall reading it.

Q This is the report that you testified that you received and you flipped through, you thought it was another piece of advertising.

A That is correct.

Q Does this report look like any of the other advertising you received?

A No, the other advertisements were booklets.

Q They had colored pictures?

A Yes.

Q Not a lot of writing?

A No.

Q Maps?

A Yes.

Q Am I correct, Mr. Finnerty, that paragraph 5 informs you that lots may be purchased for speculative purposes but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years and that a percentage of the purchase price paid included therein for use in advertising and development and that in trying to make a resale the purchases may be competing with the company which has thousands of lots to sell?

A That is what it says there, yes.

Q When you testified before on direct examination that you saw no need to read this document --

A Yes.

Q That was your choice, that was your idea that you saw no need to read it?

A That is correct.

Q Mr. Taffel did not tell you that there was no need to read it, did he?

A That is correct.

Q That is correct that he did not tell you that?

A That is correct.

Q On the back of this contract you knew, didn't you, that the contract provided that if you failed to make your payments the company had the right to cancel your contract and that you would have to forefeit the money you paid in?

A Most definitely.

Q You knew that?

A Yes, I did.

Q You also knew that you had a six month period in which you could go out to Rio Rancho and inspect your property and if you didn't like it for any reason whatever you could cancel and get your money back?

A Yes, I did.

Q I show you Defendants Exhibit BX for identification and ask you whether you have seen that before.

A Yes.

Q That was the document which Mr. Taffel showed you on March 4, 1974 and told you that you would be receiving a filled in version in the mail shortly thereafter?

A This is what I saw. I don't recall him saying anything about a filled in version of anything in the mail.

Q You saw it the night you purchased the property?

A That is correct.

Q Did you receive this subsequently in the mail?

A I don't remember. I know I saw that paper before. Receiving it in the mail, I don't recall.

Q You, in fact, gave this piece of paper to Mr. Devorkin when you came down here today, didn't you?

A Yes.

MR. ARISOHN: I offer BX.

MR. DEVORKIN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit BX received in evidence)

MR. ARISOHN: May I read from that, your Honor?

THE COURT: When was that received by you?

THE WITNESS: I don't remember receiving it, your Honor. Apparently I did receive it if that's what I gave to Mr. Devorkin.

(Mr. Arisohn read from Defendants Howard Friedman and Henry Hoffman Exhibit BX in evidence to the jury.)

Q I take it, Mr. Finnerty, that you never signed this document and sent it back to Rio Rancho?

A That's correct.

Q You knew when you received this document that you had three full days from March 15, 1974, which was some 11 days after you signed the contract, to send this document in and cancel your contract and get all your money back?

A That's correct.

MR. DEVORKIN: Wait a minute. I think that mischaracterizes the document, your Honor. If certain conditions in the document have been met. It is not carte blanche. I think the question is misleading.

THE COURT: Let me see it.

(Pause.)

THE COURT: Well, it is on all material disclosures required by the Truth and Lending Act have been given to you.

MR. ARISOHN: That's what I read, your Honor.

THE COURT: That isn't your question to the witness. That's what he objects to. You said to the witness he can just sign this and get his money back and that's all he had to do and that's not true. There are some conditions here.

MR. ARISOHN: Your Honor, that has to do with --

THE COURT: Why don't you just leave it as it is. He said he didn't sign it. You have read it to the jury.

Q Mr. Finnerty, I show you --

MR. ARISOHN: May I have this marked.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit BZ marked for identification.)

Q I show you another federal property report marked BZ for identification and ask you if you can identify that or if that refreshes your recollection of receiving a federal property report.

A There is a possibility I might have received it. I can't say exactly yes or no.

MR. ARISOHN: I offer BZ.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q Mr. Finnerty, do you recall whether or not you received this particular document?

A I don't recall.

MR. DEVORKIN: I have no objection to the document being offered as what it purports to be, your Honor.

THE COURT: He is offering that in conjunction with the witness' initials on the contract that he received it.

MR. DEVORKIN: I understand.

THE COURT: All right.

XX (Defendants Howard Friedman and Henry Hoffman Exhibit BZ received in evidence.)

MR. ARISOHN: May I read just the language on the front page, your Honor?

THE COURT: Yes.

(Mr. Arisohn read from Defendants' Exhibit BZ in evidence to the jury.)

CROSS EXAMINATION (Continued)

BY MR. ARISOHN:

Q In April, 1974, Mr. Finnerty, you stated that you went out to Rio Rancho on a tour, is that correct?

A April of '74, you said?

Q Yes, sir.

A Yes.

Q At the time you went out there, sir, I take it you knew that if you were displeased with your property you could cancel and get your money back?

A That's correct.

Q Prior to going out had you made any arrangements with the Albuquerque Police Department to come in and take the test you spoke about?

A Previous to going out there, no. Not that I recollect. Everything was done when I was down there.

Q The company did that for you?

A I believe Norman Fried was the individual that I spoke with from Rio Rancho that --

Q He was the tour director at that time?

A Yes.

Q He made the arrangements for the Albuquerque Police Department to see you?

A It was he or another person, I don't recall.

Q You didn't do that yourself?

A I don't recall, no.

Q How long did you spend at the Albuquerque Police Department?

A The entire day.

Q What day was that; do you recall?

A The exact date, no. It was one of the first couple of days that I was down there.

Q Do you recall what day you went down, was it a Wednesday?

A It might have been, April 15th. I know it was towards the mid -- 15th or 20th of April. I know it was three or four days I was down there.

Q One of those three or four days you spent the entire day at the police department?

A That's correct.

Q Did your wife accompany you to the police department?

A No, she didn't.

Q Did she stay at Rio Rancho?

A Yes.

Q Did she go up to the tram?

A I was with her the day we went to the tram.

Q WEen you went up to the tram, did you see all of Albuquerque from the top of the mountain?

A We saw a lot of mountains.

Q You also saw the city of Albuquerque, didn't you?

A I don't recall.

Q Did you look off the mountain straight?

A Yes.

Q Directly ahead of you?

A Yes.

Q You don't recall that you saw the city of Albuquerque?

A No, I was very fascinated by the ride and the surroundings. I don't recall seeing Albuquerque.

Q Did you stay up on the mountain for any period of time?

A Yes.

Q How long did you stay up there?

A Half an hour.

Q You did look off the mountain?

A Yes, I was on the other side.

Q You looked down the ski trail?

A Yes.

Q You didn't look on the side facing Rio Rancho?

A No, because I was in the restaurant there.

MR. ARISOHN: Mark these.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibits CA and CB marked for identification.)

Q By the way, you stated you took tests at the police department.

A That's correct.

Q You were offered the job at the police department?

A I was applying as an applicant for the police department.

Q What were the results of that application?

A I had passed the test. I passed the written test, that is. The visual, the audio, fingerprinted. The lieutenant who interviewed me seemed satisfied and I was informed that there was a possibility of a class in the academy in December of that year and that if I wanted to pursue it any further when I got back to New York, I would have to have my personnel folder forwarded to the Albuquerque PD for review.

Q You never pursued it any further?

A No, I did not.

Q You testified on direct examination that after you inspected the property and after you took the photographs you were disappointed in what you saw out there?

A Yes.

Q I show you CA for identification and ask you if that's your signature and the signature of your wife.

A Yes, it is.

MR. ARISOHN: I offer CA.

MR. DEVORKIN: No objection.

XX (Defendants Howard Friedman and Henry Hoffman Exhibit CA received in evidence.)

THE COURT: Let me see it.

(Pause.)

THE COURT: Thank you.

Q I am correct, Mr. Finnerty, that directly above where your signature is and where your wife's signature is is the sentence, "I have inspected my property and am satisfied with the home site I have purchased." Am I correct?

A That's correct.

Q You also as a result of your trip to Albuquerque received a vacation allowance of $100, isn't that correct? Let me show you CB for identification and ask you if that refreshes your recollection.

A I remember seeing this before in addition to the $495 that I paid to travel down there, yes.

Q That the company gave you $100 allowance towards the purchase of your property for going down and seeing your property, is that correct?

A That's what it says, yes.

MR. ARISOHN: I offer CB.

MR. DEVORKIN: No objection.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CB received in evidence.)

Q When you took these pictures, Mr. Finnerty, that is 123-O, P, Q and R in evidence, I take it that you were standing right on your property?

A It appears to me that I would have been probably standing in the roadway.

Q Those are pictures of your property in unit 24, is that correct?

A It looks like it, yes.

Q And the car which is pictured in 123-O is the car that was used to drive you out to your property?

A Yes, sir.

Q Do you recall when you had these pictures developed, how soon after your trip you had these pictures developed?

A I have no idea. I imagine it would be immediately after I came back from the trip that I had them developed.

Q So that you had these pictures when Mr. Taffel came next to your house, didn't you?

A It is a possibility that I had them then.

Q He came to your house again a month after your trip, isn't that what you testified to?

A That's right, May of '74.

Q He asked you that night to purchase property again, didn't he?

A He did.

Q He gave you some more advertising that night, didn't he?

A He did.

Q He gave you the offering reports and property reports again that night?

A Yes, he did.

Q Did you show him these pictures?

A I don't recall.

Q Did you tell him what you were discouraged nad dissatisfied about?

A I might have.

Q You didn't show him the pictures, you didn't point to any picture and say you were discouraged about that particular thing?

A I don't know if I had the pictures at that time. there is a good possibility that I might have had them developed, I testified to.

(Continued on next page.)

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Finnerty - cross

Q Nontheless, you purchased an additional half acre in Unit 8, didn't you?

A That's correct.

Q That was after your trip to Albuquerque and Rio Rancho?

THE COURT: Is that a question or a statement.

MR. ARISOHN: It is a question.

Q That was after your trip to Albuquerque and Rio Rancho?

A That's correct.

Q You testified on direct examination that one of your purposes in buying the land at Rio Rancho was to one day retire there and build a house, correct?

A That's correct.

Q And you knew if utilities had not reached your lot by the time you wanted to build a house, that the company would exchange the lot in the undeveloped portion of Rio Rancho for a lot in the developed portion, correct?

A I was informed that I could trade my property at any time for a piece of property in the developed area with utilities and a road.

Q When you wanted to build a house.

A Whenever I wanted to move down there.

Q And build a house, correct?

A Whenever I wanted to move down there, I said.

Q Well, you didn't understand that you could move to someplace in Albuquerque and because you moved to someplace in Albuquerque to trade in your lot in the undeveloped area to get a lot in the developed area? That is not what you understood, is it?

A Could you repeat that, please?

Q Your understanding was that you had to build a house in Rio Rancho and live in Rio Rancho in order to exchange the undeveloped land for developed land in the building area.

A That's right.

Q Up until the end of 1975, I believe it was your testimony that you continued making payments to Rio Rancho.

A Yes.

Q And that was after the company took back the lot which you purchased in Unit 8 and transferred all the monies you had paid in on Unit 8 to your account for Unit 24, is that correct?

A That's correct.

Q And you continued making payments until the end of the year 1975?

A In October of 1975.

Q And isn't it a fact, Mr. Finnerty, that in October 1975, you heard on TV or you read in the newspapers about this case?

A I was aware of an indictment.

Q And isn't it a fact, Mr. Finnerty, that shortly after you became aware of the indictment, you wrote a letter to Patricia Hynes and asked her how she could help you get your money back?

A That's correct.

MR. DEVORKIN: Your Honor, I would make the application that I made before about -- what we referred to before with respect to that.

THE COURT: The application is you have to indicate where you got the information from.

Q I show you, Mr. Finnerty, a document which has been marked 3549-D, a document I received from the government, and ask you, is that your letter to Ms. Hynes.

(Handing)

A Yes, this is my letter. It is my letter.

Q Was this prior -- strike that.

This letter is dated November 5, 1975, is that correct?

A If that's whatit says. I didn't read the date on it.

Q Was November 5, 1975 before or after you went to the real estate brokers in the Bronx and Yonkers, if you recall?

A The letter was dated after.

Q This was after?

A I had attempted to sell the property first.

Q When you went to the real estate brokers in the Bronx and Yonkers, did you take with you all the property reports and all the material you had?

A No, I didn't take any of that with me.

Q The real estate brokers didn't ask you for any of that material?

A They asked me what I was trying to sell it, and I told them exactly.

Q Did they ask for the material you received from the company?

A No, they didn't.

MR. ARISOHN: I have no further questions.

THE COURT: We will have a recess.

(Recess)

(In open court - jury present)

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. FLEMING:

Q Officer Finnerty, I placed before you Government's Exhibit 164-C in evidence.

Is that the contract which you signed on March 4, 1974 purchasing one half acre at Rio Rancho?

A That's correct.

Q That was your first purchase?

A Yes, it is.

Q The payment terms are on paper which is colored a blue, is that correct?

A Yes.

Q And then there is another blue statement below the refund guarantee, I mean, another statement printed on blue.

A Yes.

Q And that statement reads, " This purchase is also subject to the guarantees and conditions on the reverse side hereof," is that correct?

A Yes.

Q Would you turn to the reverse side.

I take it you read your contract?

A At the time I did.

Q All right.

At the bottom of the reverse side, does it read, "Reservation and purchase agreement"?

A Yes, it does.

Q Does it then read, "Residents of the State of New York, by virtue of the laws of that state, must be furnished with a copy of the New York offering statement at the time any solicitation or offer to sell is made, and any contract to purchase lots which is signed before such New York resident has received a copy of the New York State offering statement is deemed invalid."

Does it so read?

A Yes, it does.

Q Does it continue:

"All warranties and representations contained in such offering statement are hereby incorporated and made a part of this agreement, which shall survive delivery of the deed."

Does it so read?

A Yes, it does.

Q In view of thatlanguage, is it your testimony that you considered the New York offering statement to be promotional literature?

A Yes.

Q As a matter of fact, based upon this, is it not correct that the New York offering statement was a part of the contract?

A Yes.

Q Referring to the front page of the contract, two paragraphs below the language, "This purchase is also subject to the guarantees and conditions of the reverse side hereof," does the contract read, "I/we understand that seller," meaning Rio Rancho, "does not repurchase property, resell property for buyer or refund any payments made by buyer, except as provided in this agreement"?

A That's correct.

Q You testified that you looked at the ski-run on one side of the Siandia Mountains.

A Yes.

Q Are you a skiier?

A No, I'm not.

Q Are you a golfer?

A No, I'm not.

Q When you skimmed -- I'm sorry.

Did you testify that you did skim the New York property report?

A That's correct.

Q When you skimmed it, did you skim paragraph 5, which states, in essence, that investment is a speculation and that resale in the foreseeable future cannot be guaranteed?

A No, I don't recall reading that.

Q You missed that?

A I don't recall reading it.

Q Do you mean by that that you did not read it or you may have and you have forgotten whether you did or not?

A I may have read it and forgot that I had read it.

Q Did you know that there was a Society of Retired Policemen at Rio Rancho when you went down there?

A I was informed that there were retired police officers at Rio Rancho.

Q Did you talk to any of them while you were down there?

A Yes.

Q I take it they were happy?

A They appeared to be.

Q When you went down and applied -- I will withdraw that.

Am I correct that had you taken a job with the Albuquerque Police Department, you would have had to take a cut in pay?

A I think there was a considerable difference in the salary.

Q And you knew there was a difference in the salary when you went down to make your application for employment by the Albuquerque PD?

A Yes.

Q I take it you liked Albuquerque.

A Yes.

Q I take it, also that you believed Albuquerque was a better place to raise your four year old and two year old than New York City?

A Of course.

Q Did you testify that you attempted to list your property for sale with brokers?

A Yes.

Q Was that in the Bronx?

A It was in the Bronx and also in Yonkers.

Q Did you take your contract with you when you spoke to the brokers?

A I did not.

Q Did you explain to the brokers when you attempted to list the property for sale, did you explain exchange right to the brokers?

A No, I didn't. I didn't get that involved.

Q So that all the brokers knew was that you were trying to sell a piece of undeveloped land in Albuquerque, in New Mexico?

A In Rio Rancho.

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Q All the brokers knew from you was that you were attempting to sell a piece of undeveloped land in Rio Rancho, is that right?

A I don't recall stating to them that it was undeveloped. I stated to them that it was a piece of property that I was attempting to sell in Rio Rancho.

Q They did not know, at least they did not know from you, because you did not tell them, that there existed a contractual right to exchange that piece of property into a developed area with utilities if an owner wanted to build?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A Exactly what I had said to them --

Q My question is --

MR. FLEMING: Could I have my question?

Q You testified before, have you not?

A Yes, I have.

(Record read.)

A I don't recall --

MR. DEVORKIN: I object, your Honor, because the witness did not say that he told them it was undeveloped or developed. The question assumes --

THE COURT: He can answer the question yes, no, I don't know.

A I don't recall if I got that involved with the broker.

Q Didn't you just testify a few minutes ago that you did not explain the exchange right to the brokers? Didn't you just testify to that?

A I said that I did not remember telling them whether or not the property was developed or undeveloped. I stated that the property was in Rio Rancho.

Q My question is did you testify just a few moments ago that you did not explain the exchange right to the brokers with whom you attempted to list the property?

MR. DEVORKIN: I object. Asked and answered twice.

THE COURT: He can answer again.

A I don't recall discussing that with them.

Q Now, you stopped paying on the property after you heard about the indictment, is that correct?

A That was one of the reasons --

Q No, that was not my question. My question was, you stopped paying after you heard about the indictment?

A That's correct.

Q You testified on direct examination that you did not want to lose any more money.

A That's correct.

Q Had you completed given up your idea of moving you and your family to Albuquerque upon your retirement from the New York Police Department?

A Yes, I did.

Q You had given up that idea?

A That's correct.

Q No question that you still retained the right to move there and exchange in and build a house?

A Do I still have that right?

Q No, I am sorry. There is no question that if you continued to pay on your half acre, you still had the right to move to Albuquerque, exchange and build a house?

A That's correct.

Q You have been a cop for ten years?

A That's correct.

Q You can retire at 20 with pension?

A That's correct.

Q Your children at that time would be 14 a[illegible] 12?

A Approximately, yes.

MR. FLEMING: I have nothing further, your Honor.

XX REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Finnerty, have you recently bought a home?

A Yes, I have.

Q Where is the home?

A In Blooming Grove in Orange County.

MR. DEVORKIN: No further questions.

THE COURT: Before you step down, Mr. Finnerty, when you bought this property you knew it was undeveloped land, didn't you?

THE WITNESS: Yes, your Honor. I was aware of that.

THE COURT: You knew it wasn't ready to have a house built on it?

THE WITNESS: That's correct.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: The government calls Leon Switt.

XXX LEON SWITT, called as a witness by the government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

XXX DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Switt, how old are you?

A I am 64.

Q Where do you live?

A In Flemington, New Jersey.

Q Do you have any family?

A Yes, sir.

Q What does your family concist of?

A My wife and two children.

Q How old are your children?

A One is 38 and one is 33.

Q Are you currently employed?

A Yes, sir.

Q What is your employment?

A I am a judge with the United States Trotting Association.

Q Where do you work?

A I work at the present time at the Liberty Bell Race Track.

Q That's in Philadelphia?

A That's in Philadelphia.

MR. FLEMING: Your Honor, I missed the answer to Mr. Switt's employment.

A I am a judge with the United States Trotting Association.

MR. FLEMING: A judge?

THE WITNESS: Right.

Q Is your wife employed?

A Yes, sir.

Q What does she do?

A She runs a small nursery school.

Q What is your educational background, Mr. Switt?

A Mine is just a high school education.

Q Do you own any lots at Rio Rancho Estates?

A Yes, sir.

Q How many?

A Ten.

Q What size lot?

A Ten half acre lots.

Q Are these lots contiguous, next to each other?

A No, sir.

Q What are they?

A They are staggered. There is one half acre lot and then there is another one that belongs to someone else and then I have another half acre and another staggered all the way down the line.

Q Have you fully paid for these ten half acre lots?

A Yes, sir.

Q Do you recall how much you paid in total?

A With the interest and all I imagine it must be somewheres between 13 and $15,000, but it started out I think around 11 something, just the base price by the time I paid if off.

Q When did you first have any contact with Rio Rancho Estates?

A In 1968. The beginning of the year.

Q What type of contact?

A We got a letter through the mail.

Q What type of letter was it?

A Inviting us to a dinner.

Q Did you go to the dinner?

A Yes, sir.

Q Did you go with anyone else?

A My wife.

Q Do you recall where this dinner was?

A It was at a restaurant on U.S. 1 about halfway between Trenton and Princeton, New Jersey.

Q How many people were seated at your table?

A I think there was another couple besides the salesman representing some realty company.

Q Do you remember the name of the realty company he was representing?

A No, I don't right offhand.

Q Was he your salesman?

A He was the salesman designated for our table.

Q Were films shown during that dinner?

A Yes, sir.

Q Was there a speaker in the front of the room?

A Yes, sir.

Q Can you tell us to the best of your recollection what happened at that dinner?

A Well, first they had pamphlets out. They showed us beautiful pictures of the place.

Then they had a speaker telling what the land was worth and the potentialities of it and retirement and everything was going on there.

Then they showed us films. It was just beautiful, everything, and, well, the general thing was leading up to the opportunity of any person buying the land at that time, what it would be worth in the future.

Q What did they say about that?

A They said just teriffic investment there.

Q Do you recall if anything was said about Albuquerque?

A Oh, yes. They mentioned that Albuquerque was the fastest growing city in the United States at that time.

Q Was anything else said about how Albuquerque was growing?

A Yes, it was growing -- the only place it had to grow, it had to be to the northwest and they owned all that land there. That was a chance for us to get in and own some land there.

Q I show you what has been marked Government Exhibit 158-F for identification and ask if you can identify that.

A Yes, sir.

Q Is this something that was given to you at the dinner?

A Yes, it was.

Q I show you what has been marked 158-H for identification and ask if you can identify that.

A Yes, this is one of the pamphlets.

MR. KAUFMAN: The government offers 158-F and H.

THE COURT: Are these already in evidence?

MR. KAUFMAN: There are other copies of this in evidence.

THE COURT: Do you just want to keep dumping and dumping and dumping them in? One is enough. Show it to the witness and ask him if he saw it and it is in. You are just cluttering the record up.

MR. KAUFMAN: I do not intend to read from it --

THE COURT: It is in evidence. It becomes part of the record. If you have one in evidence, is this what you saw, yes. That's all you need, one.

MR. KAUFMAN: There are minor differences and we thought --

THE COURT: If there are minor differences, point them out, but I gather the differences -- the whole testimony this jury has heard is that the films are substantially the same from the time they put them on until the time they stopped. The documents are substantially the same from the time they started until the time they stopped.

All there is is updating regarding factual material regarding Albuquerque. That's what the film is.

MR. KAUFMAN: That's correct, your Honor.

THE COURT: Why clutter the record with hundreds of those things when one will suffice unless you have a main difference to show.

I will take these and no more of them. Any objection to these two?

MS. CROSS: None, your Honor.

XXX (Government's Exhibits 158-F and H received in evidence.)

Q Mr. Switt, what happened at the end of the presentation?

A Then the salesman again showed us different parcels that were for sale. They had a piece of paper with a number of lots onto it in different districts there and he told us, if you want to buy any of this land, now is the time to buy it at this price because it won't be offered at that price again.

He said now is the time to buy it. While he is talking to us, about that time you will hear a salesman holler at one end of the room, hold lot number and so and so, section number so and so.

Pretty soon you hear it from another section, another salesman saying hold lot so and so. Every so often you would hear that going on.

He would say this is sold, we can't touch that now. This is what is left and that is what the deal was there.

Q I show you 158-G for identification and ask if you can identify that.

A Yes, sir.

Q Can you tell us what that is?

A That is a picture of the lot or the number of the lot that they sold to us.

Q Are these the lots that were available for sale that night?

A Yes, these are the lots, every so often you hear a call, lot so and so, hold, sold. This is what was offered that night.

MR. KAUFMAN: The government offers 158-G.

MS. CROSS: May I ask a question, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q On 158-G there is some writing up in the corner. Do you know whose writing that is?

A No, I don't. I don't recall it now.

Q There is a two acre parcel with a circle drawn around it, do you know whose writing that is?

A No, I don't.

Q Who drew that on?

A No, I don't.

Q When you got it, it already had that written on it and that circle?

A I really can't remember if it did or not at this time.

Q You can't remember whether it was blank when you got it?

A No, I can't.

Q Is that your writing of numbers there?

A No, that's absolutely not my writing.

Q Is that your wife's?

A That's not my wife's writing. It's not mine and not my wife's.

MS. CROSS: No objection.

xx (Government Exhibit 158-G received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Did you buy land that night, Mr. Switt?

A Yes, sir.

Q What was your reason for buying land?

A Why we told the salesman that I would buy land providing I could buy a five acre parcel in one piece because I was a retired farmer and I thought if I settled there I would have a couple of horses and have a small little place for myself.

He said that could be arranged. Then he looked over and found a piece and he drawed it out to me, he said he thought that would suit us and we said if we can buy it according to that, we would buy it and we bought it. We bought a five acre piece.

Q Was the five acre piece that you bought item number 1 on Exhibit 158-G?

A I don't remember now. If I had a map in front of me.

Q If you can compare it with 158-D, that may refresh your recollection.

A Well, whatever this here calls for, that's the piece we bought.

Q Do you recognize Government Exhibit 158-D?

A Yes, sir. That's the contract my wife and I signed that night.

MR. KAUFMAN: The government offers 158-D.

MS. CROSS: No objection.

XXX (Government Exhibit 158-D received in evidence.)

MR. KAUFMAN: If I may just read from portions of 158-D and G, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibits 158-D and G in evidence to the jury.)

Q Mr. Switt, did you travel out to Rio Rancho after you bought those five acres?

A Yes, I did.

Q About when was that?

A I think I went out -- I bought it in February, I think I was out there in April.

Q April of 1968?

A 1968.

Q How did you go to Albuquerque?

A I drove.

Q Were you by yourself?

A No, I had my wife with me.

Q Did she drive out with you?

A She drove with me, yes.

Q What happened when you got to Albuquerque?

A Well, we went to the office, the sales office, and they took us and put us in their Rio Rancho motel there and took care of us all the way. We stayed overnight. The next morning --

Q They paid for your lodging?

A They took care of everything for us. The next morning why they said I suppose you want to see your land. They took us out and showed us the land.

Q How long did it take to get to your land?

A Well, I imagine it must have took possibly almost a half hour.

Q What happened when you got to your land?

A Well, when I saw what I got, I blew my top. I had a washed out arroyo and that five acres going right through the heart of it.

Q Can you describe what an arroyo is?

A Where a wash when the rains -- it is a raceway, if there's water there, there's water. When it is dry it is dry. It is like a dried up creek, in other words.

Q What happened after you saw your land?

A Well, then I told the salesman right then and there, I says, I am not buying anything like this. I said I can't do anything with this here for what I want. We will go back to the office and we will just check this thing all out and I will get my money back and be through with it.

He talked to me maybe we can make an adjustment, get some other land comparable to it. Maybe we can fix you up.

So he drove us back to the office and got us in the main office and he spoke to me and I just -- I was just through. I didn't want any part of it any more. My wife, she kind of thought now, she listened to him a little more and he had another man come in. Then they took us in to a fellow, I think his name was Cohen, I am not sure, but if I ever saw him I would know him again. He was a short, dark complected man I imagine around 60 years old.

He got talking to us and he finally talked us into, well, you don't need five acres, why don't you take half acre pieces and have them staggered and if somebody will buy one in between you, if he wants a larger lot, he will have to buy one from you.

It's a good investment. This thing is going up all the time. We will let you have that at this same price and we will give you different land.

My wife, she got interested. We drove out and he showed us what the land was and before we got all through we had some kind of a deal, I don't know, somewheres you would find it in the records where they give us a discount and this and that with some kind of a payment down and we changed that land for 10 half acres.

Then he told us at any time we wanted to change that we could change it down in the area where they are building if they didn't have utilities there at that time, we got ready to build and settle, we could change over any part of it down around Corrales. Down at the main part.

So that's the only basis why we went ahead and changed it.

Q Were you told whether or not there would be any added cost involved in that exchange?

A No, he said we could just exchange it.

Q What was your understanding with respect to how much of the five acres you could exchange?

A I thought any portion of it. That was my opinion. It was my understanding. Of course I misunderstood them.

Q Did you understand you could exchange only a half acre for each house you wanted to build?

A Not at that time I didn't.

Q I show you what has been marked Government Exhibit 158-B for identification and ask if you can identify that.

A Yes, this is the ten half acres that they gave me in exchange for my five acres.

MR. KAUFM[illegible] The government offers 158-B.

MR. ARKIN: We have no objection.

XXX (Government Exhibit 158-B received in evidence.)

Q By the way, Mr. Switt, did you ever find out about whether or not you could keep the horses on your land?

A Yes, I did. I found out you couldn't keep anything there.

THE COURT: You mean on the five acres?

THE WITNESS: On the five acres or on the half acre either one, I couldn't keep any.

THE COURT: Not on the half acres.

THE WITNESS: On the five acres I couldn't keep any.

Q I show you what has been marked 158-C for identification and ask if you can identify that.

A Yes, the salesman told us we could keep horses on there.

Q Is that your signature?

A That's my signature.

Q Is that your handwriting immediately preceding that?

A No, that's not my handwriting.

Q Do you know whose handwriting it is?

A That must have been the salesman.

(Continued on next page.)

MR. KAUFMAN: The government offers 158-C.

MR. ARKIN: No objection.

(Government Exhibit 158-C received in evidence)

MR. KAUFMAN: If I may refer to portions of 158-D and C, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 158-D and C in evidence to the jury)

Q Mr. Switt, what were your reasons in agreeing to make this exchange whereby you would have ten unconnected half acre lots?

A Well, one reason was my wife has arthritis bad. We thought we would settle there. She kind of had her heart set onto it.

Q Did you think you would settle on the ten unconnected half acre lots?

A No, I intended to get down close to the river bottom where I wanted to get. Change a lot over and build a home down there.

Q What was your intention with respect to the remaining nine acres?

A Being I was into it now, I would sell the other ones as time come along.

Q You would sell the others?

A Sell the others because the way they were telling me they were increasing in price.

Q When you were out there in Albuquerque in 1968 did any representative of Rio Rancho Estates say anything to you concerning resale?

A Yes, they said they were going to have a resales office in the near future. They didn't say when, but in the near future they said they would have a resales office there.

Q When you returned to New York, did you attend any more Rio Rancho dinners?

A Yes. We attended two dinners.

Q Do you recall about when that was?

A It wasn't long after that because I attended one that was held in Lakewood, New Jersey.

Q How did you happen to go to that dinner?

A They sent me a letter with a card, an invitation to it, to the dinner and asked me to bring a friend along with me or a couple, which I did.

Q What happened at that dinner?

A Well, the same thing that happened at the other dinners. The same procedure and everything and of course we didn't buy any more and our friend didn't buy anything.

Q Were you told anything at that dinner regarding your land that you owned?

A Well, they said how much it has increased in price. They had a price higher than at that time we bought it and it was only a few months.

Q I believe you said you attended a second dinner.

A Yes, I did. That was somewheres down in Burlington County. I just don't remember where. Hadenfield somewheres in the Canton area.

Q What happened at that dinner?

A That was selling commercial land.

Q Did you buy any commercial land?

A No, I didn't.

Q Was anything said to you at that dinner about the land you owned?

A Yes, they showed films and how it was developing and how the price was raising, how it was going up all the time.

Q Was anything said with respect to the land that you owned?

A No, we didn't discuss that at all. The only thing is they introduced me as being a land owner out there to the crowd that was in the dining room.

Q Did you say anything?

A No, I didn't. I just confirmed that I did own land there. That is all I did say.

Q Did there come a time a few years later when you tried to resell your land?

A Yes. In 19 -- I think it was in 1973.

Q Do you recall writing to the company before 1973?

A Yes, I think my wife did write to the company.

MR. KAUFMAN: 158-J.

(Government Exhibit 158-J marked for identification)

Q I show you what has been marked 158-J for identification and ask if you can identify the handwriting.

A Yes, that is my wife's handwriting.

Q I show you what has been marked 158-E for identification and ask if you can identify that?

A Yes, that is the letter we got back about the resale of our property.

MR. KAUFMAN: The government offers 158-J and 158-E.

MS. CROSS: We have no objection to 158-E. We would object to 158-J on the grounds of hearsay.

THE COURT: Overruled.

(Government Exhibits 158-J and 158-E received in evidence)

xxxx

MR. KAUFMAN: If I may read these letters, your Honor.

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibits 158-J and E in evidence to the jury)

Q What was the Crosswicks Country Day School?

A That is a day school that my wife owned and operated at that time.

(Mr. Kaufman continued reading from Government Exhibits 158-J and E in evidence to the jury)

Q After you received that letter, Mr. Switt, did you continue making payments on your land?

A Yes, we did.

Q Did you ever go back to Albuquerque?

A Yes, I did.

Q Do you recall approximately when?

A I think it was on July 4, 1973.

Q How did you go to Albuquerque at that time?

A We drove out that time, my wife and I.

Q What happened when you got to Albuquerque?

A We pulled in the sales office and introduced ourselves and had a very nice young man who spoke to us and he said, well, I suppose you would like to see your land and I said well, it would be all right. He took us in his car, we parked ourselves and he took us out and showed us the land. Of course we saw it before when we changed it before.

Q Excuse me.

A We knew it was the same land because when we changed it for the five acres.

Q Did the land look any different in 1973 than it had looked in 1968 referring to the land that you owned?

A No, sir, it was the same. Everything, the lines -- nothing was done there.

Q How long a drive was it to get to your property?

A Oh, I imagine that must have been, I checked the speedometer if I remember right, between eight and ten miles out from the main office.

Q Was there more development at Rio Rancho Estates in July of '73 than there had been in April of 1968?

A There was a little in that main area where the motel is, around there, but outside of that it was practically the same.

Q Was the developed area any closer to your land in July of '73 than it had been?

A Not to the developed area.

Q Than it had been in April of 1968?

A Not the developed area.

Q What happened after you saw your land when you went out with the salesman?

A Why, he told us how much it increased in value since we bought it and how fortunate we were to have it in 1973.

Q Did he give you any figure?

A Yes, he said it was worth, I think somewheres between 33 and $34,000 at that time.

Q What did you say?

A I listened to him and we got back in the office, I says to him, I am mighty glad it went up to that price. I says because we changed our plans since then, we are not going to settle here so I don't want to make money on to it, I wi-l let you make that money. I would be glad to get my money back. If you will let me have that money back, I will let you have that land.

Q YOu said you would resell it for the purchase price?

A Yes and let them make $20,000.

Q What was their reaction?

A He said but sir we are not buying land. I said I don't care if you are buying land or not, you say it is worth that X amount of dollars and I am willing to let you have it just to get my money back, I said, I don't see where that is a good business deal. I would think if the land is worth what you say it is worth.

By that time he clammed up and he wouldn't have nothing to do with me any more.

Then I told him why we wanted to sell it. How do we go about selling it.

He says I don't know, we don't do any selling here.

Then he recommended some agents there and he recommended one agent to go to see, this was on the 4th of July so we stayed overnight down in Albuquerque and we went to see this agent.

We went in to see him and he charged I think it was $50 for listing it.

Q Do you recall the name of that agent?

A Yes, sir, Mr. Heins.

Q Did you list your property with Mr. Heins?

A Yes, we listed our property with him because he told us he had quite a bit of Albuquerque property to sell and he wouldn't have too much trouble selling it. He said not to drop the price, he said it was better to keep the value up.

I told him I was willing to let it go to get my money out of it.

He says you can't do that, he says you don't want to cheapen that land up.

I said you do as you please, but I want to sell this land.

Q How long did you have your land listed with Heins?

A Well, he had it for one year, he sewed it up.

Q Did he sell it for you?

A Absolutely did not.

Q Did not?

A He did not. In fact, when we called him on the phone we couldn't get him. We got some girl, some answering service and then he sent us a letter back, which you have there, I think.

Q I show you what has been marked 158-E for identification and ask if you can identify that.

A This is when we gave him the contract to sell the land.

Q The first page?

A The first page.

Q The second page?

A The second page is his response to our phone call. He didn't give us a courtesy call back, he sent us this letter.

MR. KAUFMAN: The government offers 158-I for identification.

MS. CROSS: We would object to these, your Honor, on the grounds of hearsay. They are statements by Mr. Heins who is not a witness.

THE COURT: Objection sustained.

Q Mr. Switt, how did you make your payments to Rio Rancho Estates?

A We sent personal checks.

Q Do you recall where you sent the checks to?

A My wife took care of that. I didn't bother much with that, but I think she sent them to someplace here in New York.

Q Did she send them by mail?

A By mail. Everything was sent by mail.

MR. KAUFMAN: The government offers 158-A for identification.

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